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# Clients Want Results, Lawyers Need Emotional Intelligence

Christine C. Kelton  
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# CLIENTS WANT RESULTS, LAWYERS NEED EMOTIONAL INTELLIGENCE

CHRISTINE C. KELTON\*

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## I. INTRODUCTION

“Men decide far more problems by hate, or love, or lust, or rage, or sorrow, or joy, or hope, or fear, or illusion, or by some other inward emotion, than by reality, or authority, or any legal standard, or judicial precedent, or statute.”<sup>1</sup>

Thinking requires emotions and emotions enhance thinking. This Article suggests that the emotionally intelligent lawyer is more likely to serve the needs of clients and the legal community than the lawyer who has less understanding of, and control over, emotions.

Part II introduces two “emotionally unintelligent” lawyers, Amanda and Rick, and considers how their emotional “unintelligence” affects their new client, psychologist, Dr. Ray Randolph. Part III provides some background on the relevant research on emotional intelligence, including the history of intelligence, from general intelligence, to social intelligence, to multiple intelligences, and to emotional intelligence.

Part IV defines and explores the three current theories of emotional intelligence including the ability-based model of emotional intelligence developed by psychologists and researchers, Peter Salovey, John D. Mayer, and David R. Caruso and the two “mixed” models of emotional intelligence developed by theorists Daniel Goleman and Reuven Bar-On.

Salovey, Mayer, and Caruso’s ability-based construct of emotional intelligence is analyzed in Part V and distinguished from the mixed models of emotional intelligence. Part V also provides an in-depth examination into the four “branches” comprising the Salovey, Mayer, and Caruso ability model of emotional intelligence and their assessment tool, which measures ability-based emotional intelligence.

Part VI provides an explanatory framework suggesting why most lawyers are emotionally unintelligent based on the “thinking like a lawyer” mindset and the “lawyer personality.” Part VII revisits Amanda and Rick, who are now emotionally intelligent lawyers, and depicts them using the four “branches” of their emotional intelligence as they represent mental health professionals in various stages of litigation. Last, Part VIII concludes with some final thoughts.

All characters in this Article are fictional. They are, however, taken from actual experiences from my practice when I represented mental health professionals. Although the vignettes focus on mental health professionals as clients, the principles included in this Article are applicable for lawyers practicing in any area of the law. All clients benefit when the lawyers who represent them are emotionally intelligent.

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<sup>1</sup> CICERO, 106-43 B.C.

## II. THE EMOTIONALLY UNINTELLIGENT LAWYERS

*A. Meet Lawyers, Amanda and Rick*

Amanda is a lawyer who has been practicing for seven years. Amanda works at a midsize firm with one of the partners, Rick. Rick has practiced law for thirty years, and has been a partner at the firm for twenty years. The litigation firm primarily handles defense of hospitals. A year ago, the firm branched out to begin representing mental health professionals.

Both Amanda and Rick see themselves as competent attorneys who capably analyze legal issues and solve problems. They are regarded by their clients as efficient, effective, and able to “get the job done.”

Prior to first meeting with a client, Amanda gathers information based on a comprehensive intake form. Sometimes Amanda sends the intake form directly to the new client. Other times Amanda has her paralegal contact the client by telephone, and the paralegal goes over the intake form with the client. Amanda or her paralegal may request documents from the client. Amanda briefly reviews these documents before meeting with the client.

Generally, Rick and Amanda’s initial meeting with their client takes place in Rick’s corner office. Rick has an impressive glass aquarium in his office stocked with exotic fish and a small whitetip reef shark.

After initially meeting with their client, Amanda usually remains in contact with the client by text, email, and sometimes by telephone. Amanda rarely contacts her clients by mail.

The next time Amanda and Rick meet with their client is usually prior to trial at the mandatory or pretrial settlement conference.

*B. Amanda and Rick Meet Their New Client, Dr. Randolph, Ph.D.*

Dr. Ray Randolph is a licensed clinical psychologist. He received his license in 1985 and is in private practice. Dr. Randolph specializes in marriage and family therapy with a specialty in depression, anxiety, trauma, grief, and loss. Dr. Randolph leases office space from his colleague Dr. Jareau. Dr. Jareau supervises a psychological assistant, Adam Hotchner.

Dr. Jareau is now retired, and Dr. Randolph has taken over the primary supervision of Adam Hotchner. Dr. Randolph has been supervising Adam for two years. Dr. Randolph is unaware that Adam is dating one of Dr. Randolph’s patients, Elle, whom Adam is also treating. Elle has filed a lawsuit against Adam for professional negligence alleging that Adam engaged in a dual relationship with Elle.

Dr. Randolph has never been involved in any type of legal proceedings and has never interacted with a lawyer, professionally or personally. Dr. Randolph just received a letter from Elle’s lawyer advising Dr. Randolph he is about to be sued for negligent supervision of Adam.

Upon receipt of the letter, Dr. Randolph contacts Rick and Amanda’s firm. Amanda asks Rick’s secretary to schedule a meeting with Dr. Randolph to be held in Rick’s office. When Dr. Randolph arrives early, Rick’s secretary ushers Dr. Randolph into Rick’s office. Amanda is sitting at Rick’s desk, finishing a telephone call, signing numerous documents, and checking her Blackberry.

Amanda reaches over the desk to shake Dr. Randolph’s hand. Dr. Randolph’s hand is cold and a bit shaky, but Amanda does not appear to notice since she is now texting another client.

As she is texting, Rick rushes in, shrugging off his coat while juggling a large cup of coffee. Amanda moves to a chair located slightly behind and off to the left of where Dr. Randolph is seated. Rick immediately launches into a monologue about the process of litigation, all the while looking at the various documents that Dr. Randolph has brought with him. At the end of the meeting, Rick looks at his watch, tells Dr. Randolph that he is due in court, and advises Dr. Randolph that if he has any questions, to ask Amanda and she will get back to him.

Just as Rick is hurrying out the door, he motions to the aquarium, points at the whitetip reef shark and tells Dr. Randolph, “Don’t worry, we are sharks.” Both Rick and Amanda laugh.

As Amanda gets out of her chair to escort Dr. Randolph out, he asks Amanda how she will be contacting him if he does have additional questions. When Amanda responds that she will contact him by text or email, he deeply inhales, but Amanda does not notice. When Dr. Randolph inquires if she ever uses regular mail, Amanda replies that text or email is faster. Dr. Randolph says nothing and Amanda interprets his silence as assent.

A week later, Dr. Randolph contacts Amanda’s office and asks to speak with her immediately concerning an email Amanda just sent him. Dr. Randolph tells Amanda’s secretary that he expected that Amanda would contact him by mail. Amanda and Rick are both out of their offices. Amanda instructs her secretary to tell Dr. Randolph that another attorney in the firm will contact him. Dr. Randolph refuses to speak with any attorney other than Amanda. Amanda is very irritated and returns Dr. Randolph’s call three days later.

Are Amanda and Rick emotionally intelligent lawyers? Let’s find out.

### III. FROM GENERAL INTELLIGENCE (IQ) TO EMOTIONAL INTELLIGENCE (EI)

“All learning has an emotional base.”<sup>2</sup>

“How high is your IQ?” Amanda, Rick, and almost all lawyers would be able to answer this question immediately. Most lawyers, when asked about their emotional intelligence or (EI) skills would shrug and respond, “If we did not learn that in law school, it must not be important.”

Professional schools, business schools, and even medical schools now train professionals in emotional intelligence. These schools even screen potential applicants to determine if they possess emotional intelligence abilities.

In his groundbreaking book, *Emotional Intelligence: Why It Can Matter More Than IQ*, Daniel Goleman, a journalist and science writer for the *New York Times*, introduced the term “emotional intelligence” into the public discourse.<sup>3</sup> His 1995 book became an international bestseller and generated a tenth anniversary reissue edition.<sup>4</sup> In his watershed book, Goleman proclaimed “[w]hat data exist suggest it can be as powerful, and at times more powerful, than IQ.”<sup>5</sup>

TIME magazine launched Goleman’s book by featuring it on its cover page, declaring in bold letters “What’s Your EQ? It’s not your IQ, it’s not even a number, but emotional intelligence might be the best predictor of success in life, redefining what it says to be smart.”<sup>6</sup>

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<sup>2</sup> PLATO 428-347 B.C.

<sup>3</sup> DANIEL GOLEMAN, *EMOTIONAL INTELLIGENCE: WHY IT CAN MATTER MORE THAN IQ* ix (10th Anniversary ed. 2006).

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* at 34.

<sup>6</sup> Nancy Gibbs, *Emotional Intelligence: The EQ Factor: New Brain Research Suggests that Emotions, Not IQ, May Be the True Measure of Human Intelligence*, TIME MAGAZINE, Oct. 2, 1995, at 60; David R. Caruso, John D. Mayer & Peter Salovey, *Emotional Intelligence: New Ability or Eclectic Traits?*, 63 AM. PSYCHOL. 503, 504 (2008).

### A. General Intelligence: The “g” Factor

Philosophers and scholars have continually pondered the role that emotions play in life. Charles Darwin in his 1872 book *Expressions of Emotions in Man and Animals* posited that all humans, and even some animals, show emotion through remarkably similar behaviors.<sup>7</sup> Darwin concluded, “[w]e have also seen that expression in itself, or the language of emotions, as it has sometimes been called, is certainly of importance for the welfare of mankind.”<sup>8</sup>

Many researchers, in defining intelligence, focused on the cognitive attributes of intelligence. Charles Spearman posited in 1904 that intelligent behavior was generated by a single, general mental ability factor he referred to as the “general factor,” or simply “g.”<sup>9</sup> Despite Spearman's definition, scholars were still unable to agree on one definition of intelligence. In 1921, experts gathered at a symposium hosted by the editors of the *Journal of Educational Psychology*.<sup>10</sup> The contributors were asked to address two issues, “what they conceived intelligence to be and how it best could be measured and what the crucial next steps would be in research.”<sup>11</sup> Lewis M. Terman, a contributor at the symposium and who later went on to revise the Stanford-Binet test, posited that “an individual is intelligent in proportion as he able to carry on abstract thinking.”<sup>12</sup>

### B. Social Intelligence

Although Spearman, Terman, and their colleagues viewed “general intelligence” as a single unitary quality, psychologists and sociologists began to broaden the definition of intelligence to include other mental abilities.<sup>13</sup> As a result, the focus shifted from cognitive to non-cognitive characteristics of intelligence.

In 1920, psychologist, Edward L. Thorndike first used the term “social intelligence,” which he defined as “the ability to understand and manage people and to act wisely in human relations.”<sup>14</sup> Thorndike asserted that there were three broad classes of intellectual functioning, including (1) abstract intelligence, which is the ability to understand and manage ideas, (2)

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<sup>7</sup> CHARLES DARWIN, *THE EXPRESSIONS OF EMOTIONS IN MAN AND ANIMALS* 366 (Univ. of Chi. Press 1965) (1872).

<sup>8</sup> *Id.*

<sup>9</sup> David R. Caruso, John D. Mayer & Peter Salovey, *Emotional Intelligence: Theory, Findings, and Implications*, 15 *PSYCHOL. INQUIRY* 197, 198 (2004).

<sup>10</sup> ROBERT J. STERNBERG, *WISDOM, INTELLIGENCE, AND CREATIVITY SYNTHESIZED* 5-6 (2003).

<sup>11</sup> *Id.*

<sup>12</sup> Lewis M. Terman, *Intelligence and Its Measurements: A Symposium*, 12 *J. EDUC. PSYCHOL.* 127, 127-28 (1921).

<sup>13</sup> Marc A. Brackett, Susan E. Rivers & Peter Salovey, *Emotional Intelligence: Implications for Personal, Social, Academic, and Workplace Success*, 5 *SOC. & PERSONALITY PSYCHOL. COMPASS* 88, 89 (2011).

<sup>14</sup> Edward L. Thorndike, *Intelligence and Its Uses*, *HARPER'S MAGAZINE*, Jan. 1920 at 227; Peter Salovey & John D. Mayer, *Emotional Intelligence*, 9 *IMAGINATION, COGNITION, & PERSONALITY* 185, 187 (1990).

mechanical intelligence, which is the ability to understand concrete objects, and (3) social intelligence, which is the ability to understand people.<sup>15</sup>

In considering the “g” theorists’ view of intelligence as a single unitary trait, Thorndike and co-author Saul Stein, in their 1937 article, concluded that “whether there is any unitary trait corresponding to social intelligence remains to be demonstrated.”<sup>16</sup> They suggested that “one is left with the feeling that the present approaches are of very limited value in determining the ability of an individual to react satisfactorily to other individuals.”<sup>17</sup>

Thorndike’s theory of social intelligence broke ground for other theorists to redefine intelligence as not just a single unitary function, but to include other factors. Psychologist David Wechsler opined, “intelligence tests as now constituted measure effectively only a portion of and not all of the capacities entering into intelligent behavior.”<sup>18</sup> According to Wechsler, “[t]hese intellectual factors do not, in my opinion, constitute everything which enters into intelligent behavior.”<sup>19</sup>

In his book, *The Measurement of Adult Intelligence*, Wechsler explained the “g” factor as “a psychomathematical quantity which measures the mind’s capacity to do intellectual work.”<sup>20</sup> Wechsler questioned whether the capacity to do intellectual work was the only important factor of general intelligence.”<sup>21</sup> Wechsler concluded that it was not, adding that “Professor Spearman seemingly thinks it is, although on this point, he has failed to declare himself unequivocally.”<sup>22</sup>

Wechsler’s definition of intelligence included both “general intelligence” and “non-intellective” factors.<sup>23</sup> The non-intellective factors include “all affective and conative abilities which in any way enter into global behavior.”<sup>24</sup> Wechsler incorporated Thorndike’s theory of social intelligence into Wechsler’s own definition of intelligence as “the aggregate or global capacity of the individual to act purposely, to think rationally, and to deal effectively with his environment.”<sup>25</sup>

According to Wechsler, “in the definitive classification of a person’s intelligence, some regard must be paid to the subject’s past history, that is his social, emotional, and in the case of adults, his vocational and economic adjustments.”<sup>26</sup> In summarizing his definition of

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<sup>15</sup> John F. Kihlstrom & Nancy Cantor, *Social Intelligence*, in *THE CAMBRIDGE HANDBOOK OF INTELLIGENCE* 564, 564 (Robert J. Sternberg & Scott Barry Kaufman eds., 2011).

<sup>16</sup> Edward L. Thorndike & Saul Stein, *An Evaluation of the Attempts to Measure Social Intelligence*, 34 *PSYCHOL. BULL.* 275, 284 (1937); Salovey & Mayer, *supra* note 14, at 188.

<sup>17</sup> Thorndike & Stein, *supra* note 16, at 284.

<sup>18</sup> David Wechsler, *Non-Intellective Factors in General Intelligence*, 38(1) *J. ABNORMAL & SOC. PSYCHOL.* 101, 101 (1943).

<sup>19</sup> *Id.*

<sup>20</sup> DAVID WECHSLER, *THE MEASUREMENT OF ADULT INTELLIGENCE* 8 (3d ed. 1944).

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> Wechsler, *supra* note 18, at 103.

<sup>24</sup> *Id.*

<sup>25</sup> Salovey & Mayer, *supra* note 14, at 186.

<sup>26</sup> WECHSLER, *supra* note 20, at 47.

general intelligence, Wechsler observed, “the kind of life one lives is itself a pretty good test of a person’s intelligence.”<sup>27</sup>

Later, in 1990, psychologists and researchers Peter Salovey and John Mayer, the first to formally define emotional intelligence, concluded that Wechsler’s definition “ha[d] the advantage of broadly encompassing what people think of as intelligence, as opposed to more restricted definitions . . . such as the ability to carry on abstract thinking.”<sup>28</sup>

The early theorists of social intelligence had their critics. L. J. Cronbach, in 1960, suggested that despite “fifty years of intermittent investigation . . . social intelligence remains undefined and unmeasured.”<sup>29</sup>

Sadly, much of the progress and momentum of these early innovators of social intelligence was abandoned or forgotten until the early 1980s.

### C. Multiple or Specific Intelligences

The concept of intelligence consisting of more than one single unitary quality was revitalized in 1983, when Howard Gardner, a psychologist at the Harvard School of Education, published his book, *Frames of Mind: The Theory of Multiple Intelligences*.<sup>30</sup> In it, Gardner introduced the construct of multiple intelligences.<sup>31</sup>

Gardner defined human intellectual competence as “a set of skills of problem solving—enabling the individual to *resolve genuine problems or difficulties* that he encounters and, when appropriate, to create an effective product—and must also entail the potential for *finding or creating problems*—thereby laying the groundwork for the acquisition of new knowledge.”<sup>32</sup>

According to Gardner, intelligent behavior does not result from a single quality of the mind, like the g-based factor.<sup>33</sup> Gardner described the general intelligence theorists as “hedgehogs,” and the social and multiple intelligence theorists as “foxes.”<sup>34</sup> In criticizing the “hedgehogs,” Gardner observed “[i]t will be obvious that the conclusions of MI theory are much closer to those of the foxes and are not compatible with the beliefs of those who hold to a strong ‘g’ view.”<sup>35</sup> Later, Daniel Goleman would refer to Gardner’s book as a “manifesto refuting the IQ view . . .”<sup>36</sup>

In contrast to the “hedgehogs,” who viewed intelligence as a single quality, Gardner posited that there are seven “candidates” of intelligences including linguistic, musical, logical-

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<sup>27</sup> *Id.*

<sup>28</sup> Salovey & Mayer, *supra* note 14, at 186.

<sup>29</sup> *Id.* at 188.

<sup>30</sup> HOWARD GARDNER, *FRAMES OF MIND: THE THEORY OF MULTIPLE INTELLIGENCES* ix (3d ed. 2011).

<sup>31</sup> *Id.*

<sup>32</sup> *Id.* at 64-65.

<sup>33</sup> *Id.* at 17.

<sup>34</sup> *Id.* at 7, 17.

<sup>35</sup> *Id.* at 337.

<sup>36</sup> GOLEMAN, *supra* note 3, at 38.



mathematical, spatial, bodily-kinesthetic, and personal, comprised of both interpersonal and intrapersonal.<sup>37</sup>

Gardner recognized that different theorists used the term “intelligence” differently.<sup>38</sup> To illustrate his point, Gardner described an actual event where he was mistakenly invited to a conference on military intelligence.<sup>39</sup> Apparently, one of the organizers noticed that he was an expert on intelligence, but failed to note what type of intelligence.<sup>40</sup>

Psychologists and researchers, Peter Salovey and John Mayer, who were the first theorists to define emotional intelligence, were influenced by Gardner’s work. In describing emotional intelligence, they stated “[as] with the case of social intelligence, emotional intelligence is a subset of Gardner’s personal intelligence.”<sup>41</sup> But they cautioned “emotional intelligence does not include the general sense of self and appraisal of others.”<sup>42</sup>

Thorndike’s theory of social intelligence and Gardner’s construct of multiple intelligences informed psychologist and researcher, Robert J. Sternberg. Sternberg developed a three-part model of intelligence he labeled “successful intelligence”<sup>43</sup> combining analytical intelligence, creative intelligence, and practical intelligence.<sup>44</sup> According to Sternberg, “[p]eople adapt, shape, and select by recognizing and capitalizing on strengths, and by recognizing and compensating for or correcting weakness. People do not achieve success in the same way. Each person has to find his or her own ‘recipe’ for success.”<sup>45</sup>

In formulating his theory of successful intelligence, Sternberg agreed with Thorndike that “social intelligence is both distinct from academic abilities and a key part of what makes people do well in the practicalities of life.”<sup>46</sup> While Sternberg agreed with Gardner that intelligence was much broader than a single ability, Sternberg believed that Gardner’s seven

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<sup>37</sup> GARDNER, *supra* note 30, at xxix; GOLEMAN, *supra* note 3, at 38.

<sup>38</sup> David Caruso, John D. Mayer & Peter Salovey, *Models of Emotional Intelligence*, in HANDBOOK OF INTELLIGENCE 396, 398 (Robert Sternberg ed., 2000).

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> Salovey & Mayer, *supra* note 14, at 189.

<sup>42</sup> *Id.* at 189.

<sup>43</sup> Robert Sternberg, *Reasoning, Problem Solving, and Intelligence*, in HANDBOOK OF HUMAN INTELLIGENCE 225, 225 (Robert Sternberg ed., Cambridge Univ. Press 1982). Sternberg is currently a professor of Human Development at Cornell University in the College of Human Psychology, Department of Human Development. He is the past president of the American Psychological Association and the 2003 winner of the E.L. Thorndike Award for Achievement in Educational Psychology presented by the American Psychological Association. ROBERT J. STERNBERG, *Human Ecology Bio Page*, CORNELL UNIV., DEP’T OF HUMAN DEV., <http://www.human.cornell.edu/bio.cfm?netid=rjs487> (last visited June 21, 2014).

<sup>44</sup> Robert J. Sternberg, *Successful Intelligence: Finding a Balance*, 3 TRENDS IN COGNITIVE SCI. 436, 438-39 (1999); Erica Goode, *Scientist at Work: Robert J. Sternberg; His Goal: Making Intelligence Tests Smarter*, N.Y. TIMES, Apr. 3, 2001, <http://www.nytimes.com/2001/04/03/science/scientist-at-work-robert-sternberg-his-goal-making-intelligence-tests-smarter.html>.

<sup>45</sup> Robert J. Sternberg, *Raising the Achievement of All Students: Teaching for Successful Intelligence*, 14 EDUC. PSYCHOL. REV. 383, 385 (2002).

<sup>46</sup> GOLEMAN, *supra* note 3, at 42.

multiple intelligences “cannot adequately predict who will be successful and who will not be.”<sup>47</sup>

Sternberg's theory of successful intelligence may have resulted from Sternberg's own experience as a six-year-old boy. Sternberg was often stricken by test anxiety, and as a result he did poorly on his IQ test. In an April 21, 2001 interview with *New York Times* writer, Erica Goode, Sternberg declared “I always seem to study the things I fail at.”<sup>48</sup>

#### IV. WHAT IS EMOTIONAL INTELLIGENCE?

“Emotional intelligence includes the ability to engage in sophisticated information processing about one's own and other's emotions and to use this information as a guide to thinking and behavior.”<sup>49</sup>

##### *A. First Theorists to Formally Define Emotional Intelligence: Salovey and Mayer*

In the summer of 1987, Peter Salovey was painting the walls of his apartment with his friend John Mayer.<sup>50</sup> Both were psychology professors, and both had done research on emotions. Salovey's focus was emotions and behavior and Mayer's was emotions and thoughts.<sup>51</sup>

They were discussing a former politician who had recently dropped out of the presidential race.<sup>52</sup> Over fresh coats of paint, they began speculating as to why someone so smart could act so dumb.<sup>53</sup> They proposed a new intelligence they called “emotional intelligence.”<sup>54</sup> In joking about the genesis of their theory, Mayer quipped, “Maybe it was the paint fumes.”<sup>55</sup>

As Daniel Goleman tells his part of the story, “[a]nd because of that conversation, they published a wonderful seminal article—but in an obscure journal. The moment I saw their concept of emotional intelligence, all kinds of bells went off. And I thought, ‘I have to write about this.’”<sup>56</sup>

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<sup>47</sup> Robert J. Sternberg, *Successful Intelligence: A New Approach to Leadership*, in *MULTIPLE INTELLIGENCES AND LEADERSHIP* (SERIES IN ORGANIZATION AND MANAGEMENT) 9, 10 (Ronald Riggio, Susan Murphy & Francis Pirozzolo eds., reprt. ed. 2013).

<sup>48</sup> Goode, *supra* note 44.

<sup>49</sup> Caruso, Mayer & Salovey, *supra* note 6, at 503.

<sup>50</sup> Caruso, Mayer & Salovey, *supra* note 6, at 503; *History*, YALE CENTER FOR EMOTIONAL INTELLIGENCE, <http://ei.yale.edu/who-we-are/history/> (last visited June 20, 2014). Later, Peter Salovey became Yale University's twenty-third president. Salovey, Mayer, and their colleagues David R. Caruso and Marc A. Brackett went on to create the Yale Center for Emotional Intelligence.

<sup>51</sup> Caruso, Mayer & Salovey, *supra* note 6, at 503; *see also* ROY F. BAUMEISTER & BRAD J. BUSHMAN, *SOCIAL PSYCHOLOGY AND HUMAN NATURE*, BRIEF VERSION 224 (3d ed. 2013).

<sup>52</sup> Joshua Freedman, *Dr. Daniel Goleman on the Origins of Emotional Intelligence*, SIX SECONDS (Jan. 30, 2005, 1:23 PM), <http://www.6seconds.org/2005/01/30/goleman-emotional-intelligence/>.

<sup>53</sup> *Id.*

<sup>54</sup> *History*, *supra* note 50.

<sup>55</sup> BAUMEISTER & BUSHMAN, *supra* note 51, at 224.

<sup>56</sup> Freedman, *supra* note 52.

Peter Salovey and John Mayer actually wrote two seminal articles. In their first article, entitled *Emotional Intelligence*, they hypothesized that there was “a set of conceptually related mental processes involving emotional information.”<sup>57</sup> Included are (1) appraising and expressing emotions in self and others, (2) regulating emotion in self or others, and (3) using emotions in adaptive ways.<sup>58</sup> Their model allowed for “individual differences in processing styles and abilities.”<sup>59</sup>

In their companion piece, *Perceiving Affective Content in Ambiguous Visual Stimuli: A Component of Emotional Intelligence*, Salovey, Mayer, and colleague Maria DiPaolo described their empirical study focusing on the first of the abilities of emotional intelligence—“accurate appraisal of emotions in oneself and others.”<sup>60</sup> Their premise was that, in addition to facial expressions, people receive emotions from other visual stimuli such as works of art.<sup>61</sup> They concluded that “aspects of emotional intelligence appear to be abilities, in the traditional sense that can be measured.”<sup>62</sup>

When Salovey and Mayer created the term emotional intelligence, they were already familiar with the research on social intelligence and multiple intelligences. Influenced by “the call to broaden the study of intelligence by attending to multiple specific intelligences,” they viewed emotional intelligence as “the subset of social intelligence.”<sup>63</sup> This subset “involves the ability to monitor one’s own and other’s feelings and emotions, to discriminate among them, and to guide one’s thinking and action.”<sup>64</sup>

The basis of their theory is that there are “three or four fundamental classes of mental operations.”<sup>65</sup> The three primary classes include (1) motivation, (2) emotion, and (3) cognition.<sup>66</sup> Because these mental operations intermix with each other, Salovey and Mayer posited that when cognition and emotion interact, it “would give rise to” emotional intelligence.<sup>67</sup> Consequently, the term emotional intelligence “implies something having to do with the intersection of emotion and cognition.”<sup>68</sup>

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<sup>57</sup> Salovey & Mayer, *supra* note 14, at 190.

<sup>58</sup> *Id.* at 190-91.

<sup>59</sup> *Id.* at 191.

<sup>60</sup> John D. Mayer, Maria DiPaolo & Peter Salovey, *Perceiving Affective Content in Ambiguous Visual Stimuli: A Component of Emotional Intelligence*, 54 J. PERSONALITY ASSESSMENT 772, 772 (1990).

<sup>61</sup> *Id.* at 773.

<sup>62</sup> *Id.* at 779.

<sup>63</sup> Caruso, Mayer & Salovey, *supra* note 9, at 198; Salovey & Mayer, *supra* note 14, at 189.

<sup>64</sup> Caruso, Mayer & Salovey, *supra* note 9, at 198; Salovey & Mayer, *supra* note 14, at 189.

<sup>65</sup> Caruso, Mayer & Salovey, *supra* note 38, at 397.

<sup>66</sup> *Id.*

<sup>67</sup> *Id.* at 398.

<sup>68</sup> *Id.*

### B. What Emotional Intelligence Is Not

Salovey, Mayer, and colleague, David R. Caruso, believe that it is critical that their definition of emotional intelligence “fits within the boundaries of conceptual definitions of intelligence.”<sup>69</sup>

They argue their theory empirically “meets the standards for traditional intelligence” and “takes the EI terminology seriously.”<sup>70</sup> Salovey, Mayer, and Caruso describe their ability model as focusing “on the interplay of emotion and intelligence as traditionally defined.”<sup>71</sup>

Emotional intelligence is about ability, not personality traits.<sup>72</sup> In his blog, “The Personality Analyst,” Mayer asserts “[e]motional intelligence is often claimed to be many things it is not: journalistic accounts of EI often have equated it to other personality traits.”<sup>73</sup>

Mayer opines that qualities such as agreeableness, optimism, happiness, calmness, and motivation “have little to do with intelligence, little to do with emotions, and nearly nothing to do with actual emotional intelligence.”<sup>74</sup> Mayer laments, “it is especially unfortunate that even some trained psychologists have confused EI with such personal qualities.”<sup>75</sup>

In their 2008 article in the *American Psychologist*, Mayer, Salovey, and Caruso explain that their original definition of emotional intelligence “conceptualized EI as a set of interrelated abilities.”<sup>76</sup> They criticize other theorists who describe emotional intelligence as an “eclectic mix of traits, many dispositional, such as happiness, self-esteem, optimism, and self-management, rather than as ability-based.”<sup>77</sup> They contend that the use of the term emotional intelligence to designate eclectic mixes of traits has led to “considerable confusion and misunderstandings as to what EI is or should be.”<sup>78</sup> Mayer, Salovey, and Caruso agree with “many of our colleagues who have noted that emotional intelligence is now employed to cover too many things—too many traits, too many different concepts.”<sup>79</sup>

Salovey, Mayer, and Caruso claim that *New York Times* journalist Daniel Goleman’s bestselling book, *Emotional Intelligence: Why It Can Matter More Than Intelligence*, created and also complicated the popular understanding of it.”<sup>80</sup> They assert that Goleman’s book “became the public face of emotional intelligence and attracted further attention, in part,

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<sup>69</sup> Salovey & Mayer, *supra* note 14, at 187.

<sup>70</sup> Caruso, Mayer & Salovey, *supra* note 9, at 197, 200; *see also* Caruso, Mayer & Salovey, *supra* note 38, at 416; Brackett, Rivers & Salovey, *supra* note 13, at 89.

<sup>71</sup> Caruso, Mayer & Salovey, *supra* note 38, at 399.

<sup>72</sup> John D. Mayer, *What Emotional Intelligence Is and Is Not, The Personality Analyst*, PSYCHOL. TODAY (Sept. 21, 2009), <http://www.psychologytoday.com/blog/the-personality-analyst/200909/what-emotional-intelligence-is-and-is-not>.

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

<sup>75</sup> *Id.*

<sup>76</sup> Caruso, Mayer & Salovey, *supra* note 6, at 503.

<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

<sup>80</sup> *Id.* at 504. *See generally* GOLEMAN, *supra* note 3.

perhaps, owing to its extraordinary claims.”<sup>81</sup> In his book, Goleman claimed that “what data exist, suggest it can be as powerful, and at times, more powerful than IQ.”<sup>82</sup>

Salovey, Mayer, and Caruso were concerned that since Goleman’s book included, in part, their theory of emotional intelligence, “some investigators wrongly believed that we endorsed this complex, and at times, haphazard composite of attributes as an interpretation of EI.”<sup>83</sup>

They regret that, because emotional intelligence was defined “in the public mind as a variety of positive attributes, subsequent approaches continued to expand the concept.”<sup>84</sup> Some theories use the name emotional intelligence to “pertain to emotions and intelligence whereas others seem far broader.”<sup>85</sup> Salovey, Mayer, and Caruso take issue with these theories because they “often have little or nothing specifically to do with emotion or intelligence.”<sup>86</sup> In contrast, their model emphasizes the “recognition and use of one’s and other’s emotional states to solve problems and regulate behavior.”<sup>87</sup>

Salovey, Mayer, and Caruso distinguish between their model of intelligence that focuses on mental abilities they describe as “cooperative combination of intelligence and emotion,” and those that “mix mental abilities with personality attributes such as persistence, zeal, and optimism.”<sup>88</sup> They define the “mixing in of related and unrelated attributes” as “mixed models” of emotional intelligence which are “substantially different” than the mental ability models.<sup>89</sup>

### C. The “Mixed” Models of Emotional Intelligence

First, let’s examine the “mixed” models of emotional intelligence. A “mixed” model of emotional intelligence combines personality traits and competency traits and “mixes” these traits in with Salovey, Mayer, and Caruso’s ability model.<sup>90</sup>

Within the mixed model construct, there are two “mixed” model theories. The first is the “Goleman” model that incorporates five basic emotional and social competencies that comprise emotional intelligence.<sup>91</sup>

The second “mixed model” theory is the “Bar-On” model, named for Reuven Bar-On. This model mixes both emotional and social competencies.<sup>92</sup>

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<sup>81</sup> Caruso, Mayer & Salovey, *supra* note 6, at 504.

<sup>82</sup> GOLEMAN, *supra* note 3, at 34.

<sup>83</sup> Caruso, Mayer & Salovey, *supra* note 6, at 504.

<sup>84</sup> *Id.*

<sup>85</sup> Brackett, Rivers & Salovey, *supra* note 13, at 89.

<sup>86</sup> Caruso, Mayer & Salovey, *supra* note 9, at 197.

<sup>87</sup> Salovey & Mayer, *supra* note 14, at 189.

<sup>88</sup> Caruso, Mayer & Salovey, *supra* note 38, at 397; Caruso, Mayer & Salovey, *supra* note 6, at 504.

<sup>89</sup> Caruso, Mayer & Salovey, *supra* note 38, at 401; Caruso, Mayer & Salovey, *supra* note 6, at 504.

<sup>90</sup> Brackett, Rivers & Salovey, *supra* note 13, at 90.

<sup>91</sup> See generally DANIEL GOLEMAN, WORKING WITH EMOTIONAL INTELLIGENCE 318 (reprt. ed. 2000).

<sup>92</sup> Reuven Bar-On, *The Bar-On Model of Emotional-Social Intelligence (ESI)*, 18 PSICOTHEMA 13, 14 (Supp. 2006), available at <http://www.psicothema.com/english/psicothema.asp?id=3271>.

### 1. The Goleman model of emotional and social competencies

After his 1995 bestseller, Goleman went on to write *Working with Emotional Intelligence*.<sup>93</sup> There, Goleman defined emotional intelligence as “the capacity for recognizing our own feelings and those of others, for motivating ourselves, and for managing emotions well in ourselves and in our relationships.”<sup>94</sup>

In defining emotional intelligence, Goleman referred to Salovey and Mayer’s definition of emotional intelligence.<sup>95</sup> Goleman explained “I have adapted their model into a version I find most helpful for understanding how these talents matter in work life.”<sup>96</sup> Goleman’s model comprises five basic emotional and social competencies, including, self-awareness, self-regulation, motivation, empathy and social skills.<sup>97</sup> Under each of the five categories, Goleman details twenty-five specific competencies.<sup>98</sup>

Goleman, along with his colleagues, Richard Boyatzis and Annie McKee, later reframed their emotional intelligence competencies model into four basic “clusters,” including “self-awareness, self-management, social awareness, and social skills.”<sup>99</sup>

In measuring emotional and social competencies, Goleman, Boyatzis, and researchers at the David McClelland Institute at Hay Group developed the Emotional and Social Competency Inventory (ESCI), published by the Hay Group.<sup>100</sup> The purpose of this inventory is to measure the emotional and social competencies that distinguish outstanding leaders.<sup>101</sup>

The Emotional and Social Competency Inventory measures eighteen “clusters,” including self-awareness, self-management, social awareness, and relationship management.<sup>102</sup> The inventory is a “multi-rater assessment” where the test taker receives direct feedback from different individuals within the organization.<sup>103</sup> The test taker designates or “nominates” individuals that work within the organization.<sup>104</sup> The test taker and the “nominees” complete surveys online which take approximately thirty to forty-five minutes.<sup>105</sup> The test administrator

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<sup>93</sup> GOLEMAN, *supra* note 91.

<sup>94</sup> *Id.* at 317.

<sup>95</sup> *Id.*

<sup>96</sup> *Id.* at 317-18.

<sup>97</sup> *Id.* at 318.

<sup>98</sup> *Id.*

<sup>99</sup> Richard E. Boyatzis, Daniel Goleman & Kenneth Rhee, *Clustering Competence in Emotional Intelligence: Insights from the Emotional Competence Inventory*, in HANDBOOK OF EMOTIONAL INTELLIGENCE 343, 344 (Reuven Bar-On & J.D.A. Parker eds., 2000).

<sup>100</sup> *Emotional and Social Competency Inventory - (ESCI)*, HAY GROUP, [http://www.haygroup.com/leadershipandtalentondemand/ourproducts/item\\_details.aspx?ItemID=58&type=1&t=2](http://www.haygroup.com/leadershipandtalentondemand/ourproducts/item_details.aspx?ItemID=58&type=1&t=2) (last visited June 21, 2014).

<sup>101</sup> Daniel Goleman, *EI Assessments*, DANIEL GOLEMAN: EMOTIONAL INTELLIGENCE, SOCIAL INTELLIGENCE, ECOLOGICAL INTELLIGENCE, <http://www.danielgoleman.info/ei-assessments/> (last visited June 21, 2014).

<sup>102</sup> *Emotional and Social Competency Inventory*, *supra* note 100.

<sup>103</sup> *Id.*

<sup>104</sup> *Id.*

<sup>105</sup> *Id.*

(Hay Group) analyzes the information and generates a report which contains verbatim comments from the nominees.<sup>106</sup>

The multi-rater system is not without critics. Goleman's precursor to the ESCI, the "Emotional Competence Inventory" (ECI) also utilized a multi-rater system. According to Salovey, Mayer, and their colleagues, "[m]any of the competencies of the ECI appear to have little to do with emotional intelligence, although they are likely important and not well-captured by traditional measures of analytical intelligence."<sup>107</sup>

Similar to Goleman's mixed model of emotional and social competencies, Reuven Bar-On's model of emotional intelligence, discussed below, incorporates both emotional and social intelligence.<sup>108</sup> The primary difference between the two models is that Goleman grounds his theory "within the context of work performance."<sup>109</sup> Goleman's approach emphasizes "identification of competencies that can be used to predict work performance across a variety of organizational settings, often with an emphasis on those leadership positions."<sup>110</sup>

## 2. The Bar-On model of emotional-social intelligence

According to Reuven Bar-On's model, "emotional-social intelligence is composed of a number of intrapersonal and interpersonal competencies, skills, and facilitators that combine to determine effective human behavior."<sup>111</sup>

Reuven Bar-On was initially influenced by Darwin and his theory of adaptation.<sup>112</sup> This led Bar-On to develop a model which "views the outcome of emotionally and socially intelligent behavior in Darwinian terms of effective adaptation."<sup>113</sup> Thorndike's social intelligence construct and Wechsler's concept of non-intellective factors also influenced Bar-On's model.<sup>114</sup> Bar-On's model consists of five key components including (1) intrapersonal skills, (2) interpersonal skills, (3) stress management, (4) adaptability, and (5) general mood.<sup>115</sup>

Prior to fully developing his construct of emotional-social intelligence, Bar-On designed an experimental measurement tool he called the "Emotional Quotient Inventory" (EQ-i).<sup>116</sup>

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<sup>106</sup> *Id.*

<sup>107</sup> Peter Salovey, John D. Mayer & Paulo N. Lopes, *Measuring Emotional Intelligence as a Set of Abilities with the Mayer-Salovey-Caruso Emotional Intelligence Test*, in POSITIVE PSYCHOLOGICAL ASSESSMENT: A HANDBOOK OF MODELS AND MEASURES 251, 260-61 (Shane J. Lopez & C.R. Snyder eds., 2003).

<sup>108</sup> Bar-On, *supra* note 92, at 14.

<sup>109</sup> Robert J. Emmerling & Daniel Goleman, *Emotional Intelligence: Issues and Common Misunderstandings*, 1 ISSUES AND RECENT DEV. IN EMOTIONAL INTELLIGENCE 1, 17 (Oct. 2003), available at [http://www.eiconsortium.org/reprints/ei\\_issues\\_and\\_common\\_misunderstandings.html](http://www.eiconsortium.org/reprints/ei_issues_and_common_misunderstandings.html).

<sup>110</sup> *Id.*

<sup>111</sup> Bar-On, *supra* note 92, at 14.

<sup>112</sup> *Id.*

<sup>113</sup> *Id.*

<sup>114</sup> *Id.*

<sup>115</sup> *Id.* at 23.

<sup>116</sup> *Id.* at 15.

The EQ-i assisted Bar-On in developing his emotional and social intelligence model and “provides the theoretical basis for the EQ-i.”<sup>117</sup> The Bar-On model views emotional-social intelligence as “a cross-section of interrelated emotional and social competencies, skills and facilitators that determine how effectively we understand and express ourselves, understand others and relate with them, and cope with daily demands.”<sup>118</sup>

Bar-On defines emotional and social intelligence as being able to “effectively manage personal, social, and environmental change by realistically and flexibly coping with the immediate situation, solving problems and making decisions.”<sup>119</sup>

The “Emotional Inventory 2” (EQ-i 2.0) is Bar-On’s current emotional-social intelligence measurement tool.<sup>120</sup> This tool uses self-report to assess emotionally and socially intelligent behavior including self-perception, self-expression, interpersonal, decision-making, and stress management.<sup>121</sup> In response to critics who argue that self-report is not as valid a measure as the multi-rater, an additional measurement tool has been added, the “EQ 360,” which includes a multi-rater assessment in addition to self-report.<sup>122</sup>

Since we have looked at both mixed models of emotional intelligence, let’s examine Salovey, Mayer, and Caruso’s ability-based construct of emotional intelligence and see how their model is distinguished from the mixed models of emotional intelligence.

#### V. SALOVEY, MAYER, AND CARUSO’S ABILITY MODEL OF EMOTIONAL INTELLIGENCE

Emotional intelligence is “the capacity to reason about emotions, and of emotions to enhance thinking . . . .”<sup>123</sup>

##### *A. How Does Salovey, Mayer, and Caruso’s Ability Model of Emotional Intelligence Differ From Goleman and Bar-On’s Mixed Models of Emotional Intelligence?*

Salovey, Mayer, and Caruso’s theory of emotional intelligence is “framed within a model of intelligence,”<sup>124</sup> and emphasizes “the interplay of emotion and intelligence as traditionally defined.”<sup>125</sup>

This framework of intelligence distinguishes Salovey, Mayer, and Caruso’s ability-based model of emotional intelligence from the two mixed models constructs of Goleman and Bar-

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<sup>117</sup> *Id.* at 14.

<sup>118</sup> *Id.*

<sup>119</sup> *Id.*

<sup>120</sup> Maria Kovacs, *EQ-i 2.0: The New EQ-i 2.0 Experience*, MULTI-HEALTH SYSTEMS, PSYCHOL. ASSESSMENTS & SERVICES, <http://www.mhs.com/product.aspx?gr=io&prod=eq2&id=overview> (last visited June 21, 2014).

<sup>121</sup> *Id.*

<sup>122</sup> *Id.*

<sup>123</sup> Caruso, Mayer & Salovey, *supra* note 9, at 197.

<sup>124</sup> Emmerling & Goleman, *supra* note 109, at 14.

<sup>125</sup> Caruso, Mayer & Salovey, *supra* note 38, at 399.



On. While the mixed models of emotional intelligence focus on personality traits, Salovey, Mayer, and Caruso's model focuses on cognitive abilities.<sup>126</sup>

Salovey, Mayer, and Caruso insist that an intelligence, including emotional intelligence, "must meet stringent criteria in order to be judged as a true intelligence."<sup>127</sup> First, the intelligence "must reflect mental performance rather than preferred ways of behaving, or a person's self-esteem, or non-intellectual attainments."<sup>128</sup> Second, an intelligence "should describe a set of closely related abilities that are similar to, but distinct from, mental abilities described by already-established intelligence."<sup>129</sup> Last, intelligence develops by "age and experience."<sup>130</sup> Based on this criteria, Salovey, Mayer, and Caruso argue that their construct "meets standards for a traditional intelligence."<sup>131</sup>

### *B. The Four Branches of Salovey, Mayer, and Caruso's Model of Emotional Intelligence*

Salovey, Mayer, and Caruso's theory of emotional intelligence comprises "four discrete emotional abilities," including "(1) perceiving emotions accurately in one's self and others, (2) using emotions to facilitate thinking, (3) understanding emotions, emotional language, and the signals conveyed by emotions, and (4) managing emotions to attain specific goals."<sup>132</sup>

These four emotional abilities are organized in a hierarchy referred to as "branches."<sup>133</sup> The more basic abilities, such as "perceiving emotions" are at the bottom of the model and the more advanced abilities such as "managing emotions" are at the top.<sup>134</sup>

Let's look further at each branch.

#### *1. Branch #1: Perceiving Emotion*

Emotions contain information.<sup>135</sup> The first step in perceiving emotions is to pay attention to the "cues" we receive and then to correctly identify the meaning of these "cues."<sup>136</sup> Caruso

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<sup>126</sup> K.V. Petrides, *Ability and Trait Emotional Intelligence*, in THE WILEY-BLACKWELL HANDBOOK OF EMOTIONAL DIFFERENCES 656, 657 (Tomas Chamorro-Premuzic, Sophie von Stumm & Adrian Furnham eds., 2011).

<sup>127</sup> John D. Mayer, David R. Caruso & Peter Salovey, *Emotional Intelligence Meets Traditional Standards for An Intelligence*, in EMOTIONAL INTELLIGENCE: KEY READINGS ON THE MAYER AND SALOVEY MODEL 123, 126 (Peter Salovey, Marc A. Brackett & John D. Mayer eds., 2004).

<sup>128</sup> *Id.*

<sup>129</sup> *Id.* at 126-27.

<sup>130</sup> *Id.* at 127.

<sup>131</sup> Caruso, Mayer & Salovey, *supra* note 9, at 200.

<sup>132</sup> *Id.* at 199; *see also* Brackett, Rivers & Salovey, *supra* note 13, at 91.

<sup>133</sup> Caruso, Mayer & Salovey, *supra* note 38, at 399; *see also* Caruso, Mayer & Salovey, *supra* note 6, at 506.

<sup>134</sup> Brackett, Rivers & Salovey, *supra* note 13, at 91; Caruso Mayer & Salovey, *supra* note 6, at 506.

<sup>135</sup> DAVID R. CARUSO & PETER SALOVEY, THE EMOTIONALLY INTELLIGENT MANAGER: HOW TO DEVELOP AND USE THE FOUR KEY EMOTIONAL SKILLS OF LEADERSHIP 9 (2004).

<sup>136</sup> *Id.* at 90.

and Salovey refer to this skill as “reading people correctly.”<sup>137</sup> At the basic level, this ability requires us to accurately perceive and identify emotions in “physical states (including bodily expressions) and thoughts.”<sup>138</sup> A more sophisticated ability requires us to identify emotions in other stimuli such as works of art and music using “cues” such as sound, appearance, and color.<sup>139</sup> The ability to tell the difference between real and false emotions is “considered an especially sophisticated perceiving ability.”<sup>140</sup>

In identifying our emotions, it is helpful to ask ourselves these questions: “Do I know what mood I am in and can I label it?”<sup>141</sup> “How strong is my emotion?”<sup>142</sup> “Do I feel this way often?”<sup>143</sup> “At this time, is it appropriate to feel the way I feel?”<sup>144</sup> “Did I properly express my emotions to others?”<sup>145</sup>

To correctly identify emotions in others, look for facial expressions.<sup>146</sup> Does their smile accurately reflect what is going on with their eyes? Be aware of tone, pitch, and pace in the voices of others. Is their voice and are their words consistent or inconsistent with one another?<sup>147</sup> Look at body posture. Standing erect and standing rigidly may indicate different emotional states.

If we know the other person, do we know his or her basic level of emotion? Do we know what happens when his or her emotions intensify? Do we know how he or she would react in a similar situation?

## 2. Branch #2: Using Emotions to Facilitate Thinking

How we feel impacts how we think. Emotions can enhance thinking.<sup>148</sup> Emotions (1) focus or prioritize our attention, (2) help us shift and gain different perspectives, (3) influence our thoughts, and (4) help us reason and problem solve.<sup>149</sup> Caruso and Salovey refer to this skill as “getting in the right mood.”<sup>150</sup>

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<sup>137</sup> *Id.* at 83.

<sup>138</sup> Brackett, Rivers & Salovey, *supra* note 13, at 91; Caruso, Mayer & Salovey, *supra* note 6, at 506.

<sup>139</sup> Brackett, Rivers & Salovey, *supra* note 13, at 91; Caruso, Mayer & Salovey, *supra* note 6, at 506.

<sup>140</sup> Brackett, Rivers & Salovey, *supra* note 13, at 91.

<sup>141</sup> *Id.* at 150.

<sup>142</sup> *Id.*

<sup>143</sup> *Id.*

<sup>144</sup> CARUSO & SALOVEY, *supra* note 135, at 247.

<sup>145</sup> *Id.* at 247.

<sup>146</sup> *Id.* at 90.

<sup>147</sup> *Id.*

<sup>148</sup> *Id.* at 43.

<sup>149</sup> *Id.* at 44; *see also* David R. Caruso, John D. Mayer & Peter Salovey, *Emotional Intelligence and Emotional Leadership*, in *MULTIPLE INTELLIGENCES AND LEADERSHIP* 55, 58 (Ronald Riggio, Susan Murphy & Francis Pirozzolo eds., reprinted ed. 2013).

<sup>150</sup> CARUSO & SALOVEY, *supra* note 135, at 100.

If we understand which mood is best for a particular type of thinking, then we can “get in the right mood,” to enhance our thinking. To get us in the right mood, let’s ask ourselves these questions: “What am I thinking about?” “How have my feelings affected my thoughts?” “What caused me to feel this way or why am I feeling this way?”<sup>151</sup> “Will it help to feel this emotion?” “Will this emotion help me target the issue or will it distract me?”<sup>152</sup>

In using emotions to facilitate thinking, let’s examine how different moods affect our thinking.

Positive or happy moods are good for “big picture” thinking.<sup>153</sup> This mood expands our thinking and allows us to think “outside the box.”<sup>154</sup> Instead of dwelling on specific information, our emotions allow us to look at the “bigger picture.”<sup>155</sup> This “top-down” method of thinking helps with our inductive reasoning.<sup>156</sup>

Positive or happy moods help us brainstorm, be more creative in developing new ideas, generate new solutions, and help us make decisions.<sup>157</sup> When we are positive or happy, we have often just achieved a goal.<sup>158</sup> This mood energizes us to achieve additional goals, which, in turn, motivates us.<sup>159</sup> Be careful of the downside of thinking when in a positive or happy mood since we tend to make more mistakes in problem solving.<sup>160</sup>

Sad moods are good for focused and detailed thinking.<sup>161</sup> When we are sad or feeling negative we pay more attention, focus on details, and search for and spot more errors.<sup>162</sup> This “bottom up” method of thinking helps with our deductive reasoning.<sup>163</sup> These results were confirmed in a study conducted by Salovey, Mayer, and Caruso where they used music and movies to induce happy or sad moods.<sup>164</sup> The participants were timed as they solved deductive and inductive reasoning problems.<sup>165</sup> The results showed that when people were sad, they solved deductive reasoning problems more quickly than when they were happy.<sup>166</sup> Salovey

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<sup>151</sup> *Id.* at 150, 160.

<sup>152</sup> *Id.* at 248.

<sup>153</sup> *Id.* at 101.

<sup>154</sup> *Id.* at 17-18, 101.

<sup>155</sup> *Id.* at 101.

<sup>156</sup> *Id.* at 44.

<sup>157</sup> *Id.* at 101.

<sup>158</sup> *Id.* at 118.

<sup>159</sup> *Id.*

<sup>160</sup> *Id.* at 101.

<sup>161</sup> *Id.* at 102.

<sup>162</sup> *Id.* at 18, 102.

<sup>163</sup> *Id.* at 102.

<sup>164</sup> Melissa Dittman, *How Emotional Intelligence Emerged*, 34 AM. PSYCHOL. MONITOR 64, 64 (2003). See generally Peter Salovey & Tibor P. Palfai, *The Influence of Depressed and Elated Mood on Deductive and Inductive Reasoning*, 13 IMAGINATION, COGNITION AND PERSONALITY 57-71 (1993).

<sup>165</sup> Dittman, *supra* note 164, at 64.

<sup>166</sup> *Id.*

posited that this might be because sadness leads people to focus on details and worry more about missing pieces of evidence.<sup>167</sup>

A fearful mood is good for motivating us.<sup>168</sup> Fear is a survival mechanism which motivated our ancestors by signaling danger.<sup>169</sup> Fear today motivates us to pay more attention to our environment by looking for possible threats.<sup>170</sup> When we are evaluating possible problems and considering worst-case scenarios, it helps to be in a bit of a fearful mood rather than in a happy mood.<sup>171</sup>

An angry mood is good for righting a wrong.<sup>172</sup> We feel angry when we encounter an iniquity.<sup>173</sup> For the emotionally intelligent, anger helps direct our field of vision and focuses our energy on the wrongdoing.<sup>174</sup> For the emotionally unintelligent, anger can hijack any sense of thinking.

A guilty, shameful, or embarrassing mood is good for maintaining appropriate conduct.<sup>175</sup> Shame and guilt enjoin us to apologize when we engage in bad behavior.<sup>176</sup> This helps to keep us on the right track.<sup>177</sup> Shame and embarrassment help avoid fights, since it is more difficult for someone to stay angry with us if we are feeling shame or embarrassment.<sup>178</sup> Salovey and Caruso assert that embarrassment is a “visible apology to the other person for messing up.”<sup>179</sup>

### 3. Branch #3: Understanding Emotions

The ability to understand emotions is “the most cognitive, or thinking-related” of the four branches.<sup>180</sup> This ability is based on four underlying principles of emotions.<sup>181</sup>

The first principle is that emotions have their own “vocabulary.”<sup>182</sup> A basic skill of understanding emotions is our ability to “label” our emotions.<sup>183</sup> When we learn the vocabulary of emotions, we are able to accurately label our emotions. For example, are we feeling “melancholy” as opposed to “sad,” or “disappointed” as opposed to “angry”?

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<sup>167</sup> *Id.*

<sup>168</sup> CARUSO & SALOVEY, *supra* note 135, at 102.

<sup>169</sup> *Id.* at 12.

<sup>170</sup> *Id.* at 44.

<sup>171</sup> *Id.* at 106.

<sup>172</sup> *Id.* at 103.

<sup>173</sup> *Id.*

<sup>174</sup> *Id.*

<sup>175</sup> *Id.* at 120-21

<sup>176</sup> *Id.* at 120.

<sup>177</sup> *Id.*

<sup>178</sup> *Id.* at 121.

<sup>179</sup> *Id.*

<sup>180</sup> *Id.* at 55.

<sup>181</sup> *Id.*

<sup>182</sup> *Id.* at 55-6.

<sup>183</sup> Brackett, Rivers & Salovey, *supra* note 13, at 91.

The second principle of understanding emotions is that emotions have “underlying causes” and are not “random events.”<sup>184</sup> Caruso and Salovey provide us with a simple “mathematical formula.”<sup>185</sup> “If event X, then emotion Y.”<sup>186</sup>

The third principle of understanding emotions is that emotions are complex.<sup>187</sup> Some emotions are made up of a “combination of simpler emotions.”<sup>188</sup> According to Robert Plutchik’s wheel of emotions, there are eight primary emotions, including joy, acceptance, fear, surprise, sadness, disgust, anger, and anticipation.<sup>189</sup> When these primary emotions combine together, they produce a complex emotion. For example, contempt is made up of the primary emotions of disgust and anger.<sup>190</sup>

Some emotions contradict each other, and are “mixed.”<sup>191</sup> We often use the term “bittersweet” to refer to a moment or an event that is simultaneously happy and sad. Charles Dickens captured this mixed emotion in the first line of his novel, *A Tale of Two Cities*: “It was the best of times and the worst of times . . . .”<sup>192</sup>

The fourth principle of understanding emotions is that emotions change “according to a set of rules.”<sup>193</sup> Caruso and Salovey refer to this skill as “predicting the emotional future.”<sup>194</sup> Since emotions increase and decrease, we can predict why we (and others) feel a certain way and what will happen next.<sup>195</sup> For example, if we are walking along a beach and feeling content, as our feeling increases, we predict we will feel happy.<sup>196</sup> Caruso and Salovey refer to these predictions as “emotional what-if’s.”<sup>197</sup>

In predicting our emotional future, it helps to ask ourselves these questions: “Can I label what I am feeling?”<sup>198</sup> “Is there a ‘real’ issue underlying the current cause of my

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<sup>184</sup> CARUSO & SALOVEY, *supra* note 135, at 19, 57.

<sup>185</sup> *Id.* at 57.

<sup>186</sup> *Id.*

<sup>187</sup> *Id.* at 57-8.

<sup>188</sup> *Id.* at 57.

<sup>189</sup> *Id.* at 19-20.

<sup>190</sup> *Id.* at 57.

<sup>191</sup> *Id.* at 59.

<sup>192</sup> CHARLES DICKENS, *A TALE OF TWO CITIES* 1 (Richard Maxwell ed., Penguin Classics reissue ed. 2003).

<sup>193</sup> CARUSO & SALOVEY, *supra* note 135, at 115.

<sup>194</sup> *Id.* at 58.

<sup>195</sup> *Id.* at 26.

<sup>196</sup> *Id.* at 59.

<sup>197</sup> *Id.* at 124.

<sup>198</sup> *Id.* at 55.

emotions?”<sup>199</sup> “How intense are my feelings?”<sup>200</sup> “Are my feelings increasing or decreasing?”<sup>201</sup> “What will happen if I continue to feel this way?”<sup>202</sup>

#### 4. Branch #4: Managing Emotions

Since emotions contain information, managing our emotions means that we can assimilate our emotions into our thinking process.<sup>203</sup> Using the information we gain from our emotions helps us make decisions.<sup>204</sup> Caruso and Mayer describe this ability as “do it with smart feelings.”<sup>205</sup>

Managing our emotions does not mean we shut down or try to suppress the way we feel.<sup>206</sup> It is exactly the opposite. We stay open to our feelings, even if they are unpleasant.<sup>207</sup> A more advanced level of managing emotions is our ability to “engage or detach from an emotion depending on its perceived utility.”<sup>208</sup> “Effective emotion management is not a question of whether we should strive to control our feelings but how we can intelligently engage and disengage from them.”<sup>209</sup>

In managing our emotions, it is not enough to be aware of what we are feeling.<sup>210</sup> Caruso and Salovey suggest that in processing our emotions, we consider the clarity and strength of the feeling, how the feeling is affecting our thoughts, how often do we feel this way, and is the feeling typical or unusual.<sup>211</sup>

What happens to us when we do not manage our emotions? First, our emotions manage us. Second, we lose the important data that our emotions provide us as we make decisions.<sup>212</sup> Since we also expend cognitive and emotional energy stifling or trying to eliminate our feelings, we do not focus as carefully on our actual problem.<sup>213</sup>

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<sup>199</sup> *Id.* at 57, 150.

<sup>200</sup> *Id.* at 248.

<sup>201</sup> *Id.* at 58, 248.

<sup>202</sup> *Id.* at 248.

<sup>203</sup> *Id.* at 26.

<sup>204</sup> *Id.*

<sup>205</sup> *Id.* at 134.

<sup>206</sup> *Id.* at 67.

<sup>207</sup> *Id.* at 138; *see also* Caruso, Mayer & Salovey, *supra* note 149, at 59; Brackett, Rivers & Salovey, *supra* note 13, at 91.

<sup>208</sup> Brackett, Rivers & Salovey, *supra* note 13, at 91, 92.

<sup>209</sup> CARUSO & SALOVEY, *supra* note 135, at 68.

<sup>210</sup> *Id.* at 69.

<sup>211</sup> *Id.* at 26.

<sup>212</sup> *Id.* at 202.

<sup>213</sup> *Id.*

*C. Measuring Emotional Intelligence: Mayer-Salovey-Caruso Emotional Intelligence Test (MSCEIT)*

Now that we are familiar with the four branches, how do we measure each branch of emotional intelligence?

Salovey and Mayer first developed the Multifactor Emotional Intelligence Scale (MEIS), which they, along with David R. Caruso, later refined in 1997.<sup>214</sup> Their measurement tool is called the Mayer-Salovey-Caruso Emotional Intelligence Test (MSCEIT).<sup>215</sup>

The MSCEIT uses sets of problems that deal with emotions to test abilities within the four branches of emotional intelligence.<sup>216</sup> Since the model of emotional intelligence is ability-based, the MSCEIT measures are performance-based, and are not based on self-report.<sup>217</sup>

For example, in testing the first branch of emotional intelligence, “perceiving emotions,” the MSCEIT asks the test taker to look at a picture of a person and choose from a list of emotions that best reflect what emotions the person is displaying.<sup>218</sup>

In measuring the second branch of emotional intelligence, “using emotions to facilitate thinking,” the test taker is given a short factual scenario where the test taker is to assume a particular mood. The test taker is asked to choose a task that the test taker could best accomplish in that particular mood. For example, a factual scenario assumes that the test taker is in a sad mood. The test taker is told to choose one out of three tasks that could best be accomplished in the sad mood.<sup>219</sup>

In measuring the third branch of emotional intelligence, “understanding emotions,” the questions are designed to test skills such as “recognizing the causes of emotions, how emotions change, and how emotions combine together.”<sup>220</sup> These questions are what Salovey, Mayer, and Caruso refer to as “emotional vocabulary” questions.<sup>221</sup> An example is where the test taker is given an emotion and is then asked to choose what two emotions combine to create that emotion.<sup>222</sup>

In measuring the fourth branch of emotional intelligence, “managing emotions,” an example would be to give the test taker a factual scenario involving another person. The test taker is then asked to choose what behavior of the test taker would likely result in the other person feeling better.<sup>223</sup>

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<sup>214</sup> *Id.* at 75; Marc A. Brackett & Peter Salovey, *Measuring EI with the Mayer-Salovey-Caruso Emotional Intelligence Test (MSCEIT)*, 18 PSICOTHEMA 34, 35-36 (Supp. 2006).

<sup>215</sup> CARUSO & SALOVEY, *supra* note 135, at 75. *See generally* About the MSCEIT, EI SKILLS GROUP: ABILITY MODEL OF EMOTIONAL INTELLIGENCE, <http://eiskillsgroup.com/MSCEIT.html> (last visited June 21, 2014).

<sup>216</sup> *Id.*

<sup>217</sup> Caruso, Mayer & Salovey, *supra* note 149, at 67.

<sup>218</sup> *Id.*

<sup>219</sup> *Id.* at 77-78.

<sup>220</sup> *Id.*

<sup>221</sup> *Id.* at 78-79.

<sup>222</sup> *Id.* at 79.

<sup>223</sup> *Id.*

## VI. WHY ARE MOST LAWYERS EMOTIONALLY UNINTELLIGENT?

“Lawyers are analytically oriented, emotionally unintelligent, and interpersonally underdeveloped, and as adversarial as the legal system within which they operate.”<sup>224</sup>

A. *Thinking and Performing Like a Lawyer*

The goal of legal education is to learn how to “think like a lawyer.” Law school trains students to recognize, analyze, and articulate legal issues. According to Scott Turow, a novelist and lawyer, who chronicled his first year attending Harvard Law School, “it is during the first year that you learn to think like a lawyer, to develop the habits of the mind and world perspective that will stay with you throughout your career.”<sup>225</sup>

After completing his first year of law school, Turow observed “I think law schools as institutions attract the people least suited to them at the start.”<sup>226</sup> “We are men and women drawn to the study of rules, people with a native taste for order.”<sup>227</sup> It is not surprising that when these students with the “taste of order” on their tongues become attorneys, they know how to “think” like lawyers, but are ill-equipped to effectively perform as lawyers.

Law professor Marjorie Shultz, and psychology professor Sheldon Zedeck, in a much-cited empirical study, developed twenty-six “effective” factors that practicing lawyers, law students, judges, and clients viewed as “important to effective lawyering performance.”<sup>228</sup>

Each of these twenty-six factors falls within the four branches of emotional intelligence. Shultz and Zedeck assert that “emotional intelligence could be important to lawyers who must manage interactions with clients, juries, judges and colleagues.”<sup>229</sup> Further, emotional intelligence helps lawyers “read and interpret” whether communications between lawyers and others are being understood.<sup>230</sup>

Shultz and Zedeck organized their lawyer effectiveness factors into eight “umbrella categories,” including (1) intellectual and cognitive, (2) research and information gathering, (3) communications, (4) planning and organizing, (5) conflict resolution, (6) client and business relations-entrepreneurship, (7) working with others, and (8) character.<sup>231</sup> Each category identifies aspects of lawyering effectiveness.<sup>232</sup>

<sup>224</sup> Chris Guthrie, *The Lawyer's Philosophical Map and the Disputant's Perceptual Map: Impediments to Facilitative Mediation and Lawyering*, 6 HARV. NEGOT. L. REV. 145, 162-63 (2011).

<sup>225</sup> SCOTT TUROW, ONE L: THE TURBULENT STORY OF A FIRST YEAR AT HARVARD LAW SCHOOL 10 (reprt. ed. 2010).

<sup>226</sup> *Id.* at 300.

<sup>227</sup> *Id.*

<sup>228</sup> Marjorie M. Shultz & Sheldon Zedeck, *Predicting Lawyer Effectiveness, A New Assessment for Use in Law School Admission Decisions* 1, 24-25 (July 31, 2009) (CELS 2009 4th Annual Conference on Empirical Studies Paper), available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1442118](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1442118).

<sup>229</sup> *Id.* at 23-24.

<sup>230</sup> *Id.*

<sup>231</sup> *Id.* at 25-26.

<sup>232</sup> *Id.* at 27.



Shultz and Zedeck further broke these eight categories down into “specific examples” of “effective lawyering behavior.”<sup>233</sup> The first category, “intellectual and cognitive,” includes behavior such as (1) analysis and reasoning, (2) creativity/innovation, (3) problem solving, and (4) practical judgment.<sup>234</sup> The second category, “research and information gathering,” includes (1) researching the law, (2) fact finding, and (3) question and interviewing.<sup>235</sup>

The third category, “communications,” includes (1) influencing and advocating, (2) writing, (3) speaking, and (4) listening.<sup>236</sup> The fourth category, “planning and organizing,” includes (1) strategic planning, (2) organizing and managing one’s own work, and (3) organizing and managing others (staff/colleague).<sup>237</sup>

The fifth category, “conflict resolution,” includes (1) negotiation skills, and (2) being able to see the world through the eyes of others.<sup>238</sup> The sixth category, “client and business relations- entrepreneurship,” includes (1) networking and business development, and (2) providing advice and counsel and building relationships with clients.<sup>239</sup>

The seventh category, “working with others,” includes (1) developing relationships within the legal profession, and (2) evaluation, development, and mentoring.<sup>240</sup> The eighth and last category, “character,” includes (1) passion and engagement, (2) diligence, (3) integrity/honesty, (4) stress management, (5) community involvement and service, and (6) self-development.<sup>241</sup>

Based on these twenty-six factors that are “important to effective lawyering performance,” the lawyer who cultivates, understands, and uses emotional intelligence will be a more effective lawyer than the lawyer who is emotionally “unintelligent.”

### *B. The Lawyer’s Personality*

Let’s meet Mongo. Each lawyer has an “inner beast” named “Mongo.”<sup>242</sup> James McElhaney, a law professor, and a writer for the American Bar Association, describes Mongo as a lawyer’s inner “co-counsel.”<sup>243</sup> Mongo views lawsuits as battles, opposing attorneys as “saber-toothed tiger(s),” and witnesses as “potential enemy(s).”<sup>244</sup> For Mongo, the purpose of a lawsuit is to “kill the other lawyer.”<sup>245</sup> At trial, Mongo “snarls,” “slams books,” “browbeats

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<sup>233</sup> *Id.* at 26-27.

<sup>234</sup> *Id.* at 26.

<sup>235</sup> *Id.*

<sup>236</sup> *Id.*

<sup>237</sup> *Id.*

<sup>238</sup> *Id.*

<sup>239</sup> *Id.* at 27.

<sup>240</sup> *Id.*

<sup>241</sup> *Id.*

<sup>242</sup> Jim McElhaney, *Meet Mongo: Unleashing your Inner Beast in Court Hurts You, Not the Other Side*, A.B.A. J. MAG. (Feb. 1, 2010, 3:20 AM), [http://www.abajournal.com/magazine/article/meet\\_mongo/](http://www.abajournal.com/magazine/article/meet_mongo/).

<sup>243</sup> *Id.*

<sup>244</sup> *Id.*

<sup>245</sup> *Id.*

witnesses,” and “hurls” questions like a “barrage of stones.”<sup>246</sup> Mongo is the one who “breaks your pencil or slams your book when the judge gives you a bad ruling.”<sup>247</sup> “How do you control Mongo? Most lawyers don’t.”<sup>248</sup>

As preposterous as this might sound, lawyers do have a “definable personality.”<sup>249</sup> The traits or “preferences that distinguish lawyers from non-lawyers” fall into two categories, a “drive to achieve” and an “interpersonal relating style.”<sup>250</sup>

According to Susan Swaim Daicoff, a law professor and expert on lawyer personalities, a lawyer is driven to succeed because of (1) a “need to achieve” and a “tendency” to become “ambitious under stress,” (2) a tendency to be “competitive” and “pessimistic” and (3) a focus on “materialism” and “emphasis on extrinsic rewards and the economic bottom line.”<sup>251</sup>

In describing the lawyer’s interpersonal relating style, Daicoff explains that in making decisions, “lawyers have a preference for ‘Thinking’ as measured by Myers-Briggs Type Indicator” and lawyers “prefer a ‘rights orientation’ as opposed to the ‘ethic of care’ orientation.”<sup>252</sup> Daicoff describes lawyers as “interpersonally insensitive,” “dominant,” and those who “tend to become aggressive under stress.”<sup>253</sup>

Daicoff suggests that “[t]his gap promotes misunderstanding and mutual criticism.”<sup>254</sup> “Clients may view lawyers as cold, unemotional, and inhuman, whereas lawyers may view clients as illogical, emotional, and frustrating to deal with.”<sup>255</sup> Daicoff concludes “these characteristics” cause “the public to see lawyers as a special, strange breed of individuals.”<sup>256</sup>

Since lawyers possess “personality traits” that are different from non-lawyers and since non-lawyers view lawyers as a “strange breed,” effective lawyers would benefit by infusing their thinking with emotions.

“Whether or not we admit it, whether we are aware of them or not, whether or not we like it, emotions are always influencing our cognitive functioning and moral judgments.”<sup>257</sup> As a

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<sup>246</sup> *Id.*

<sup>247</sup> James W. McElhaney, *The Power of the Proper Mindset*, A.B.A. J. MAG. (Apr. 1, 2007, 7:44 AM), [http://www.abajournal.com/magazine/article/the\\_power\\_of\\_the\\_proper\\_mindset/](http://www.abajournal.com/magazine/article/the_power_of_the_proper_mindset/).

<sup>248</sup> *Id.*

<sup>249</sup> SUSAN SWAIM DAICOFF, *LAWYER, KNOW THYSELF: A PSYCHOLOGICAL ANALYSIS OF PERSONAL STRENGTHS AND WEAKNESSES* 40-41 (2004); SUSAN SWAIM DAICOFF, *COMPREHENSIVE LAW PRACTICE: LAW AS A HEALING PROFESSION* 9-11 (2011).

<sup>250</sup> DAICOFF, *COMPREHENSIVE LAW PRACTICE: LAW AS A HEALING PROFESSION*, *supra* note 249, at 10-11.

<sup>251</sup> *Id.*

<sup>252</sup> *Id.*

<sup>253</sup> *Id.*

<sup>254</sup> *Id.*

<sup>255</sup> *Id.*

<sup>256</sup> *Id.*

<sup>257</sup> MARJORIE A. SILVER, *THE EFFECTIVE ASSISTANCE OF COUNSEL, PRACTICING LAW AS A HEALING PROFESSION* 6 (2006).

result, Marjorie Silver argues that “[l]awyers need emotional intelligence as much as they need the other skills that make them [G]ood Lawyers.”<sup>258</sup>

## VII. THE EMOTIONALLY INTELLIGENT LAWYER

“Law is human interaction in emotionally evocative climates. Any lawyer who can understand what emotions are present and why is at tremendous advantage.”<sup>259</sup>

### A. *The Emotionally Intelligent Lawyers, Amanda and Rick*

I opened this Article with the story of Amanda and Rick, the emotionally unintelligent lawyers. Amanda and Rick are now well versed in emotional intelligence. Let’s watch them apply their emotional intelligence skills with their clients.

#### 1. Amanda and her Client, Dr. Grace Kim, Ph.D.

Dr. Kim is a licensed psychologist and has been treating her patient Susan for six weeks. Dr. Kim received an email from Susan’s insurance provider requesting Susan’s records. Since Dr. Kim had obtained written client consent from Susan, Dr. Kim sent the records. Later that day, Susan left a message for Dr. Kim. The message said that Susan spoke with her insurance benefits manager and based on Dr. Kim’s diagnosis included in the medical records, Susan’s psychotherapy sessions were not covered under Susan’s policy. At Susan’s next session, she asked Dr. Kim to change the diagnosis. Dr. Kim declined.

Based on Dr. Kim’s diagnosis, Susan was not able to obtain insurance coverage elsewhere. Dr. Kim has just been served with a complaint for professional negligence. Susan’s complaint alleges that Dr. Kim’s conduct caused Susan to lose her medical insurance coverage and that she will be unable to obtain medical coverage in the future.

Amanda is having her first meeting with Dr. Kim. Let’s examine Amanda’s emotional intelligence abilities using Salovey, Mayer, and Caruso’s four branches of emotional intelligence.

#### Branch #1: The ability to perceive emotions in one’s self and in others

As Amanda listens to Dr. Kim’s story, Amanda realizes that she is judging Dr. Kim. Amanda’s body is tense, her voice has a rigid tone, and she is bombarding Dr. Kim with questions. Amanda feels skeptical when Dr. Kim responds to Amanda’s questions.

Amanda sees Dr. Kim tapping her foot and shifting in her chair. Dr. Kim’s body is turned inward and she looks small, as if she is shrinking into her chair. She is very still. Dr. Kim’s mouth is gaping, her eyes are wide open, and her eyebrows are raised. As Amanda talks, Dr. Kim continually interjects “I just can’t believe it.” Dr. Kim’s voice sounds timid and scared. Amanda notices that Dr. Kim smiles at inappropriate times.

#### Branch #2: The ability to use emotions to facilitate thinking

Amanda’s skepticism leads her to ask Dr. Kim additional questions, in part, to determine the accuracy of Dr. Kim’s responses. Amanda is curious about why Dr. Kim smiles during

<sup>258</sup> Marjorie A. Silver, *Love Hate, and Other Emotional Interference in the Lawyer/Client Relationship*, 6 CLINICAL L. REV. 259, 259 (1999).

<sup>259</sup> Ronda Muir, *The Importance of Emotional Intelligence in Law Firm Partners*, 33 LEGAL PRAC. MAG. 60 (July/Aug. 2007) (quoting Peter Salovey).

times that do not appear to be appropriate. She notes this as a possible concern regarding Dr. Kim's credibility.

Since Amanda is aware that emotion-laden memories can be remembered in more detail than less intense memories, Amanda utilizes Dr. Kim's emotions to ask her detailed questions about the event. Amanda might also use Dr. Kim's shocked emotional state as a "cue" to ask more in-depth questions, which may assist Amanda in confirming whether her skepticism is well founded.

#### Branch #3: The ability to understand emotions

Emotions change according to a "set of rules," and transition from one stage to another. When Amanda finds herself becoming skeptical, she knows that her skepticism might turn into criticism, which might turn into disbelief.

Since emotions are complex, Amanda surmises that Dr. Kim is not only surprised by the lawsuit, but is shocked and angry that her patient Susan is suing her. Amanda bases her belief on Dr. Kim's repeated statement, "I can't believe this is happening."

#### Branch #4: The ability to manage emotions

Amanda stays open to her feelings of skepticism. She does not try to ignore them or "shut them down." Instead, she acknowledges that being skeptical may be useful in determining facts, but may not be useful in establishing client trust. Since this is their initial meeting and Amanda's first opportunity to establish trust, she monitors her judgment through the rest of the meeting.

Amanda stays open to Dr. Kim's feelings of surprise and shock. To establish trust, Amanda alternates between gathering facts and helping Dr. Kim process her feelings.

### 2. Rick and his Client, Igal Engstrom, Psy.D.

Dr. Engstrom has been seeing Tyson in weekly group psychotherapy. Tyson signed a written commitment to attend the group once a week for six months, and has missed the group sessions for four consecutive weeks. When Tyson does attend the group sessions, he is continually late, which disrupts the other group members. Others in the group have previously expressed they are disgruntled by Tyson's tardiness and lack of attendance.

The group members are upset that Dr. Engstrom has allowed this behavior to continue. Dr. Engstrom has continually warned Tyson about his behavior and has advised Tyson that he will no longer be participating in the group because he failed to comply with the weekly six month commitment.

A year after terminating Tyson, Dr. Engstrom receives a letter from Tyson's lawyer advising Dr. Engstrom that Tyson will be suing Dr. Engstrom for professional negligence alleging abandonment.

Let's watch Rick use his emotional intelligence skills in taking the deposition of Dr. Engstrom's patient, Tyson.

#### Branch #1: The ability to perceive emotions in one's self and in others

As Rick walks into the conference room accompanied by Dr. Engstrom, Rick recognizes the nervous energy he always feels right before a deposition. He feels his anxiety as a tight ball in his stomach and his voice sounds tight and constricted.

Rick sees that Dr. Engstrom's eyebrows are lowered and his lips are turned down as if he is frowning or grimacing. He is blinking fast and frequently swallowing, which may mean he

is feeling apprehensive. He exhibits a low energy level, and is hunched over with his head down. He makes no eye contact with Tyson or Tyson's attorney.

When Rick begins the deposition, he perceives that Tyson appears calm. Tyson's posture is relaxed and he is lounging in the conference chair with his arms resting behind his head and cradling his neck.

When Rick questions Tyson about his behavior in the group setting, Rick notices that Tyson sits up straight with perfect posture, appearing to make himself look larger. Tyson's tone is arrogant and one corner of his mouth rises in a half smile, with a look of contempt. His nose wrinkles as if in distaste. Before Tyson responds to Rick's questions, Tyson looks away for a brief second to compose his facial features. This makes Rick feel uncomfortable and energized at the same time.

#### Branch #2: The ability to use emotions to facilitate thinking

Rick is aware that his emotions enhance his thinking. First, he uses his nervous energy at the beginning of the deposition to help him focus. Although he believes that he is a competent lawyer, he feels that he never knows enough about his case. He uses his anxiety to ask detailed questions. This helps him feel more confident about his case.

Sadness can lead to more detailed and in-depth thinking. Rick uses Dr. Engstrom's sadness to help Dr. Engstrom focus on the details of Tyson's testimony. This further assists Rick in asking very specific questions.

When Tyson looks away to compose his facial features, Rick surmises that Tyson is nervous. Rick uses Tyson's nervousness as a signal to alter his linear line of questioning and ask questions that Tyson may not feel confident answering.

#### Branch #3: The ability to understand emotions

Emotions can be contradictory. Rick is aware that he feels both uncomfortable and energized. Rick is not puzzled by his contradictory emotions because he understands that emotions can be "mixed" and inconsistent with one another.

Rick recognizes that emotions transition. Dr. Engstrom's feelings of apprehension may lead to fear, which may lead to terror. Rick understands that if Dr. Engstrom feels a bit fearful, he can assist Rick by providing detailed information. This will help Rick in asking Tyson questions.

Primary emotions can blend to create complex emotions. Tyson's contempt may be a combination of disgust and anger. Since emotions are not random, Rick realizes that Tyson's disgust may be caused by Tyson's perceived feeling of injustice.

#### Branch #4: Managing Emotions

Rick feels both energized and uncomfortable. Since Rick knows that emotions contain information, he uses his energy to generate precise questions to prove his case.

Although anxiety may feel uncomfortable, Rick sees the utility of this feeling and does not attempt to minimize or eliminate this emotion. Instead, he uses these feelings as a "signal" to probe into areas of questioning that Tyson may not feel as confident in answering.

Before the deposition, Rick and Dr. Engstrom worked out a "signal" to indicate when Dr. Engstrom might need a break. Consequently, Rick monitors Dr. Engstrom's emotions to ensure that Dr. Engstrom takes a break when needed. Rick manages Dr. Engstrom's emotions by providing a quiet space for Dr. Engstrom to process his emotions.

### 3. Amanda and her Client, Alexander Alejandro, MFT

Mr. Alejandro is treating Casey, whom he has diagnosed with post-traumatic stress disorder (PTSD). Mr. Alejandro reads in a psychology journal about a type of psychotherapy used in treating PTSD, “Eye Desensitization and Reprocessing” (EMDR). A month later, he attends a weekend workshop, which includes one day on how to perform EMDR. At the workshop, he buys two books, one on using EMDR with PTSD patients, and one on how to self-treat using EMDR. After reading both books and attending a week-long training conference specifically on the use of EMDR, he begins weekly EMDR treatment with Casey.

Six months later, Casey sees another therapist for marital counseling. This therapist advises Casey that Mr. Alejandro was not properly trained in using EMDR. Casey sues Mr. Alejandro for professional negligence alleging Mr. Alejandro practiced outside the scope of his expertise.

Amanda is representing Mr. Alejandro. She has just received the plaintiff’s expert witness report stating that Mr. Alejandro’s use of EMDR as a psychotherapeutic modality fell below the standard of care.

Mr. Alejandro is in Amanda’s office and they are going over the expert’s report. Let’s observe how Amanda uses her emotional intelligence skills with Mr. Alejandro.

#### Branch #1: The ability to perceive emotions in one’s self and in others

Amanda feels empathetic. She appreciates how hurtful it is as a professional for another professional to render an opinion of negligent conduct. Amanda’s facial expression is open. Her tone is warm and contains no judgment. She is not sitting behind her desk. In fact, she just moved her chair next to Mr. Alejandro so they can look at the report together.

Amanda perceives that Mr. Alejandro is feeling shame. He sits hunched over, head hung down and held in his hands. It is very difficult for him to look Amanda in the eye. He mumbles repeatedly “I should have known better. Now I will lose my license.”

#### Branch #2: The ability to use emotions to facilitate thinking

Amanda uses her empathy to help her expand her thinking. Her empathy allows her to see the “bigger picture.” She looks beyond the specifics of the expert witness report and views the report holistically. This mood assists Amanda in brainstorming new and different ideas on how to rebut the expert witness’s report as a whole. She feels more creative in her thinking, which encourages her to learn more about the use and treatment of EMDR.

Mr. Alejandro’s shame and guilt may indicate his belief that he acted negligently. Amanda might utilize his feelings to help him look at the report from a different perspective.

#### Branch #3: The ability to understand emotions

Amanda uses her skill of “predicting the emotional future.” She acknowledges that if her mood increases and moves beyond the point of empathy, she may ignore certain details that might negatively affect the case and lead her to poor decision-making.

Feelings are not random; they are caused by events. When Mr. Alejandro repeatedly says, “I should have known better,” Amanda considers that the underlying cause of his shame and guilt may be his belief that he is not good enough. If his feelings intensify, his shame and guilt may escalate into despair and hopelessness.

#### Branch #4: Managing Emotions

Amanda manages her emotions by continuing to engage Mr. Alejandro with empathy. As they go through the expert witness's report, Amanda stays open to Mr. Alejandro's emotions and monitors his feelings as they work through the report. Amanda carefully listens for statements such as "I am hopeless." This may signal that Mr. Alejandro's feelings are intensifying and may spiral into despair.

#### 4. Rick and his Client, Dr. Spencer Reid, Ph.D.

Dr. Reid began seeing Miranda Rosenberg for marital counseling. Miranda's husband, Cutter, attended six of Miranda's counseling sessions.

A year ago, Miranda went through a contentious custody battle. Both she and Cutter were seeking sole legal and physical custody of their three minor children. Three months into the legal proceedings, Miranda's family law attorney, Jeffrey Thompson, contacted Dr. Reid. The attorney advised Dr. Reid that since Dr. Reid had been treating Miranda, Mr. Thompson expected Dr. Reid to testify in various legal proceedings concerning custody.

At that time, Mr. Thompson instructed Dr. Reid to take very limited therapy notes. The lawyer also instructed Dr. Reid to omit a diagnosis. Although Dr. Reid's custom and practice was to take detailed notes and to include a diagnosis, he reluctantly complied with Mr. Thompson's request.

Mr. Thompson called Dr. Reid to testify at the custody proceedings. Under cross-examination by opposing counsel, Dr. Reid testified that although he did not include a diagnosis in his therapy notes, he had diagnosed Miranda as having a borderline personality disorder according to the Diagnostic and Statistical Manual of Mental Disorders, 5<sup>th</sup> Edition.

Dr. Reid further testified that when Cutter, Miranda's husband, attended the six sessions of marital counseling with Miranda, Dr. Reid noted in his records that Cutter "might combust at any minute."

Cutter and Miranda Rosenberg sued Dr. Reid for professional negligence alleging that Dr. Reid breached Cutter's confidentiality, misdiagnosed Miranda as a borderline personality disorder, and failed to take adequate notes while treating Miranda.

Rick is taking the deposition of the Rosenbergs' current treating therapist. Along with Mr. Thompson, who is representing the Rosenbergs, Mr. and Mrs. Rosenberg are also present. Let's note Rick's use of emotional intelligence as he takes the deposition of the Rosenbergs' therapist.

#### Branch #1: The ability to perceive emotions in one's self and in others

Rick previously litigated another lawsuit where Jeffrey Thompson was the opposing counsel. Rick believes that Mr. Thompson is not trustworthy and engages in gamesmanship. Because of his prior experience with Mr. Thompson, Rick recognizes that he is feeling very guarded.

Rick looks over at Dr. Reid, who is looking at the Rosenbergs. Dr. Reid's lips are compressed in a tight thin line. His nostrils are flared, his eyes are narrowed, and his eyebrows are pulled down and together. Dr. Reid's face looks stern and he stares unwavering. When Dr. Reid speaks, his voice is very controlled and his words are terse and abrupt. He is sitting rigidly and upright in his chair.

#### Branch #2: The ability to use emotions to facilitate thinking

Rick uses his guardedness to inform his choice of questions. He carefully words his questions to avoid objections and to reduce any gamesmanship from Mr. Thompson.

Dr. Reid is feeling very angry with the Rosenbergs and Jeffrey Thompson. He is angry with Miranda because she involved him in the custody proceeding. He is angry with Mr. Thompson because Mr. Thompson instructed Dr. Reid to take limited notes and to omit a diagnosis.

Dr. Reid is angry with Cutter. When Cutter attended Miranda's therapy sessions, Dr. Reid believed he was not providing psychotherapy to Cutter. Based on his belief, Dr. Reid disclosed at trial that Cutter "might combust at any minute."

Rick is aware that Dr. Reid's feelings of anger narrow his field of vision and consume a great deal of mental energy. Dr. Reid might use his own anger and mental energy to instead focus on the factual issues of the case.

#### Branch #3: The ability to understand emotions

Primary emotions, when blended together, create complex emotions. Dr. Reid is angry and also anticipating the questioning by opposing counsel. Rick has studied Plutchik's wheel of emotions, and recognizes that anger and anticipation are primary emotions. Blended together, these emotions may produce aggressiveness. By "predicting the emotional future," Rick is cognizant that Dr. Reid may become aggressive.

#### Branch #4: Managing Emotions

Rick accepts that his guardedness may be appropriate in handling Mr. Thompson's gamesmanship, but may not be appropriate in eliciting as much information from the Rosenbergs.

Rick's guardedness may cause the Rosenbergs to be less open in answering his questions. Since this guarded feeling is not useful in obtaining information, Rick changes his tone when questioning Miranda and Cutter. In responding to Jeffrey Thompson, Rick sees the utility in continuing to be guarded.

Dr. Reid's anger is not a typical emotion for him and he may not have the skills to handle such a volatile emotion. Rick monitors Dr. Reid's anger to ensure Dr. Reid does not become aggressive.

### 5. Amanda and her Client, Francesca Costa, LCSW

Francesca Costa, a licensed clinical social worker, treated Tom Nguyen five years ago for eight sessions of cognitive behavioral therapy to treat insomnia. Six months after therapy terminated, they met for lunch to discuss the possibility of Tom designing a website for Francesca Costa's business. Francesca was so pleased with Tom's website design that she offered Tom a position as her information technology expert.

One day Tom dropped by Francesca's office to troubleshoot a security issue. He told Francesca that he was going to the dentist in two hours, but had forgotten to take the Xanax his dentist prescribed for him. Francesca went to the same dentist who also prescribed her Xanax. Francesca gave Tom a Xanax. Tom took the pill right before he left for his dentist appointment.

An investigator from the Board of Behavioral Sciences has just contacted Francesca. Tom Nguyen complained to the Board of Behavioral Sciences about Francesca Costa's conduct. The Board is investigating whether Francesca acted negligently in giving prescription medication to Tom Nguyen and engaging in a dual relationship with Tom Nguyen by employing him.

Amanda and Francesca Costa are meeting with the Board of Behavioral Sciences investigator, Madison Baylor, at the Board's office.



Branch #1: The ability to perceive emotions in one's self and in others

Amanda feels optimistic. She has worked with both the Assistant Attorney General and investigator Madison Baylor numerous times with favorable results. When Amanda greets Madison, Madison smiles easily. Her eyes are wrinkled when she smiles which tells Amanda that Madison's smile is genuine. Madison's tone is light and her body is relaxed.

When Amanda introduces Madison to Francesca, Francesca does not meet Madison's eyes. Francesca's eyes appear vacant, as if in shock. She moves her chair back from Madison's desk to isolate herself. Francesca does not respond to Madison's questions other than "yes" or "no." Francesca repeatedly tells Madison that Tom Nguyen was her "friend," not her "patient."

Amanda perceives that Francesca is feeling not only disbelief, but also betrayal. Amanda's perception is not just based on Francesca's facial and verbal expressions, but on Francesca's recurring statement that Tom Nguyen was a "friend," and not a "patient."

Branch #2: The ability to use emotions to facilitate thinking

Amanda's optimistic mood causes her to be open to creative solutions. As Amanda listens to Madison, she discovers that Mr. Nguyen contacted the Board of Behavioral Sciences because what he really wants is an apology from Ms. Costa.

Amanda uses Francesca's feelings of betrayal to help her look at the situation from Mr. Nguyen's perspective. Perhaps Mr. Nguyen is also feeling betrayed. This helps Francesca appreciate Mr. Nguyen's emotions.

Branch #3: The ability to understand emotions

Amanda "predicts the emotional future." She asks herself "What if Mr. Nguyen's feelings of betrayal continue to intensify?" She concludes that Mr. Nguyen may feel angry. If Mr. Nguyen feels angry he may not be satisfied with an apology. Consequently, Mr. Nguyen may request that the Assistant Attorney General file a complaint on behalf of the Board of Behavioral Sciences to revoke Ms. Costa's license.

Branch #4: Managing Emotions

At this stage, Amanda is still working with Madison to resolve the matter by way of apology, so Amanda continues feeling optimistic.

Amanda counsels Francesca to stay open to her feelings and not stifle them. In meeting with Madison, Amanda sees the utility of Francesca's feelings of betrayal. These feelings might help Francesca connect with Tom and understand why Tom wants an apology. If, however, Amanda sees that Francesca's emotions are managing her, Francesca may not be integrating her thinking with her emotions, which could lead to poor decision-making. Because of this, Amanda carefully monitor's Francesca's emotions.

6. Rick and his Client, Dr. Harper Cole, Psy.D.

Dr. Cole saw Amar Dasari for regularly scheduled appointments at 3:00 p.m. weekly. Based on Mr. Dasari's request five months ago, Dr. Cole rescheduled her sessions with Amar as the last appointment of the evening. Since the parking lot was dark, Amar routinely walked Dr. Cole out to her car. They would chat for a while and began to hug each other goodbye. The hugs led to kisses on the cheek.

Amar sued Dr. Cole for professional negligence alleging Dr. Cole engaged in a dual relationship with him. The case has been in litigation for over a year, and the parties are attending a voluntary settlement conference.

Branch #1: The ability to perceive emotions in one's self and in others

Rick disapproves of Dr. Cole's conduct. Rick's face is stern, his lips are pursed and his eyes are narrow. He is sitting ramrod straight and rigid; his body turned away from Dr. Cole.

Rick sees that Dr. Cole is feeling guilty. She looks down before meeting Rick's eyes. She acts nervous and she fidgets. She repeatedly swallows and frequently bites her lip. Her shoulders sag. She tells Rick that she should not be "let off the hook" because she is a "bad therapist."

Branch #2: The ability to use emotions to facilitate thinking

Rick acknowledges that he disapproves of Dr. Cole's behavior with her patient, Amar. Rick uses his feelings as a signal that he may not be focusing on the facts of the case. Since this is a settlement conference, he uses this "cue" to talk to Dr. Cole about their strategic plan. This helps him not only to focus on the case, but move beyond his feelings of disapproval.

Rick could use Dr. Cole's feelings of guilt and shame to assist her in looking at multiple perspectives, in particular, the judge's perspective.

Branch #3: The ability to understand emotions

Rick plays the "what if" game to predict his emotional future. First, he recognizes that he is feeling disapproval. Second, he asks himself if there is a "real" issue underlying his disapproval of Dr. Cole. He discerns that the underlying issue arises from a client whom he previously represented years ago. This client intentionally engaged in a pattern of sexual misconduct with his patients while they were hospitalized in a psychiatric treatment center. As a result, Rick disapproves of all mental health professionals who touch or even hug their patients.

Rick acknowledges that if his disapproval of Dr. Cole intensifies, this may lead to feelings of disgust that will affect his ability to effectively represent Dr. Cole. His disapproval may magnify Dr. Cole's feelings of self-reproach, which could lead to blame, and ultimately lead to self-loathing.

Branch #4: Managing Emotions

Emotions contain information. Because Rick's disapproval is not useful in deciding whether to settle the lawsuit, Rick detaches from this emotion.

Rick understands that Dr. Cole's feelings of shame and guilt are typical when discussing whether to settle a lawsuit. Her feelings are useful in viewing her conduct from a different perspective. Rick monitors Dr. Cole's emotions. If she does not manage her feelings, she may simply act on her emotions of shame and guilt. This will impact her decision-making ability.

*B. Dr. Randolph's First Meeting with Amanda and Rick: A Retrospective*

Now that Amanda and Rick are equipped with emotional intelligence skills, let's revisit their first meeting with Dr. Randolph.

When Dr. Randolph contacts the firm, Amanda speaks directly with Dr. Randolph. As she talks with Dr. Randolph, she pays attention to the words he uses and listens for his pitch and

tone. After identifying how Dr. Randolph is feeling, Amanda uses Plutchik's wheel of emotions to evaluate how Dr. Randolph might feel if his emotions intensify. Amanda manages Dr. Randolph's emotions by scheduling an immediate appointment.

When Dr. Randolph arrives early to the meeting, Amanda personally escorts Dr. Randolph into Rick's office. She assesses how Dr. Randolph is feeling by looking at his facial and bodily expressions, in addition to listening to his words and the pitch and tone of his voice. Dr. Randolph's cold and shaky hand indicates that he is nervous and possibly afraid. After determining his mood, Amanda asks Dr. Randolph questions that facilitate his thinking process.

When Rick arrives a few minutes late, he does not rush into the meeting shrugging off his jacket and juggling a large cup of coffee. Instead he drops his coffee off at his secretary's desk and rearranges his suit jacket. He takes a quiet moment to go over Dr. Randolph's documents to ensure he is familiar with the substance of the documents. When Rick has sufficiently composed himself and taken a deep breath, he walks into the meeting. He greets Dr. Randolph and shakes his hand. Rick, like Amanda, recognizes that Dr. Randolph's hands are cold and shaky which may mean Dr. Randolph is nervous and afraid. Rick makes a note to spend time talking with Dr. Randolph about emotions that may arise because of the lawsuit.

Before Rick sits down at his desk, Amanda invites Dr. Randolph and Rick to join her at the small round table in Rick's office, which faces away from the aquarium. Since all three are able to look at each other, the attorneys can easily monitor Dr. Randolph's facial and bodily expressions to identify what he is feeling as the meeting progresses.

Sitting together at the round table encourages both attorneys and Dr. Randolph to engage in a dialogue instead of a monologue. Amanda and Rick appreciate that certain moods facilitate different types of thinking. Since Dr. Randolph appears sad and nervous, Rick and Amanda help Dr. Randolph use his feelings to focus on the detailed facts of the lawsuit.

Because they are examining the facts of the case, Amanda believes it is an appropriate time to examine the documents Dr. Randolph brought in. Since they are sitting together, all three look at and discuss the documents. Dr. Randolph's mood assists him in carefully looking at the specific information in the documents.

Because emotions change according to a "set of rules," Amanda and Rick predict Dr. Randolph's emotional future by asking Dr. Randolph a series of questions. First, can Dr. Randolph label what he is feeling? Second, is Dr. Randolph aware of an underlying cause of his emotions other than the actual lawsuit? Third, how intense are his emotions and are they increasing or decreasing? Last, what will happen to him if he continues to feel the way he currently feels?

In talking with Dr. Randolph about his emotions, Amanda and Rick help Dr. Randolph manage his emotions. They emphasize that Dr. Randolph's goal is not to shut down or eliminate his emotions. The three of them consider which emotions are useful in engaging in and which emotions are not useful.

As the meeting ends, Rick sees that Dr. Randolph is feeling a bit more positive. Rick takes advantage of Dr. Randolph's positive mood by inviting Dr. Randolph to take a few moments to write down any new ideas, concerns, or questions.

Rick explains that since he has a required court appearance, he will say goodbye to Dr. Randolph so as to not interrupt Dr. Randolph's reflection time and the time Amanda will spend with Dr. Randolph going over his questions. Rick stands up, shakes Dr. Randolph's hand, and assures Dr. Randolph that he and Amanda will be available to help Dr. Randolph as they move through the lawsuit together.

After Rick leaves, Dr. Randolph shares his concern with Amanda about how she will be contacting him. Amanda notices right away that Dr. Randolph has deeply inhaled and is holding his breath. She uses this "cue" to ask him how he is feeling and why he is concerned.

What Dr. Randolph tells her surprises her: Dr. Randolph tells her that he would like to be contacted by regular mail because if he knows ahead of time that a letter is coming, he will be mentally prepared to receive the letter.

Amanda manages Dr. Randolph's emotions by generating a plan. She and Dr. Randolph agree that she will contact him by regular mail. When she sends the letter, she will call him and let him know that she mailed a letter to him. That way, he can prepare himself mentally. When Dr. Randolph receives the letter, he will not open it. Instead he will call Amanda, and while they are on the phone together, Dr. Randolph will open the letter. Amanda will help Dr. Randolph process his emotions while reading the letter and be available to answer his questions immediately.

### VIII. CONCLUSION

"To deliberate well—which requires both sympathy and detachment—one must therefore be able not only to think clearly but to feel in certain ways as well. The person who shows good judgment in deliberation will thus be marked as much by his affective dispositions as by his intellectual power, and he will know more than others do because he feels what they cannot."<sup>260</sup>

Emotions contain valuable information that enhances our cognitive processes. We are not able to think without our emotions. Many lawyers are not emotionally intelligent perhaps because the focus of legal education is to teach students to "think like lawyers." As a result, many lawyers possess and exhibit certain definable personality traits which may impede effective lawyering.

The lawyer's ability to integrate emotions and cognition can transform the lawyer-client relationship into a richer and deeper trust relationship. All lawyers and clients benefit when lawyers understand, appreciate, and apply emotional intelligence skills.

Clients benefit from lawyers who infuse their practice with cognition and emotion. The emotionally intelligent lawyer knows that a client wants to be acknowledged, not just as a party to a lawsuit, but as a person who has a problem that needs to be solved. The lawyer who perceives and accurately identifies how the client feels demonstrates to the client that the lawyer understands and sees the client as a person. The emotionally intelligent lawyer understands that a client does not want the lawyer to ignore the client's feelings. The lawyer who uses the client's emotions and integrates them with the client's thinking process shows the client that emotions are not only appropriate, but also beneficial in a legal setting. The emotionally intelligent lawyer is aware that a client wants to be understood. A lawyer who understands the underlying causes and consequences of emotions helps clients to use their emotions to help influence their thinking.

The emotionally intelligent lawyer appreciates that a client does not want to feel out of control; nor does the client want the lawyer to be out of control. The lawyer who manages the client's emotions enables the client to feel less chaotic. Moreover, the lawyer who manages his or her own emotions knows how to intelligently engage or disengage from emotions, instead of being controlled by emotions.

Lawyers also benefit by integrating emotions into their thinking. The lawyer who combines emotions with cognition is better able to reason, problem solve, gain different perspectives, communicate with clients, and make more effective decisions.

How do lawyers become emotionally intelligent? The first step is to be aware of emotions and learn how emotions facilitate thinking. Local and state bar associations provide training

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<sup>260</sup> Anthony T. Kronman, *Living in the Law*, 54 U. CHI. L. REV. 835, 858 (1987).

on emotional intelligence skills for lawyers, including the use of mindfulness and meditation to cultivate emotional intelligence.

What lies in the future? Are there any new areas of “intelligence” that could enhance lawyering?

John Mayer has developed a new construct of intelligence he refers to as “personal intelligence.”<sup>261</sup> Mayer defines personal intelligence as “the capacity to reason about personality and to use personality and personal information to enhance one’s thoughts, plans, and life experience.”<sup>262</sup> In his 2014 book, *Personal Intelligence: The Power of Personality and How It Shapes Our Lives*, Mayer describes his theory as a “new human intelligence.”<sup>263</sup> Mayer explains that personal intelligence is a “mental capacity” to “guide our lives—to reason about ourselves and other people.”<sup>264</sup>

What is the benefit of personal intelligence? According to Mayer, “people who display such ability understand themselves and know who they are.”<sup>265</sup> They evaluate others more accurately” and “make better guesses about how people are likely to behave.”<sup>266</sup>

Cultivating personal intelligence just might be the next step for the emotionally intelligent lawyer.

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<sup>261</sup> John D. Mayer, *Personal Intelligence*, 27 IMAGINATION COGNITION & PERSONALITY 209, 209-10 (2008).

<sup>262</sup> *Id.* at 210.

<sup>263</sup> JOHN D. MAYER, *PERSONAL INTELLIGENCE: THE POWER OF PERSONALITY AND HOW IT SHAPES OUR LIVES* 6 (2014).

<sup>264</sup> *Id.*

<sup>265</sup> John D. Mayer, *Know Thyself*, 47 PSYCHOL. TODAY 65, 66 (Mar./Apr. 2014), available at <http://www.psychologytoday.com/articles/201402/know-thyself>.

<sup>266</sup> *Id.*